SEPARATE STATEMENT OF UNDISPUTED FACTS

1	HYPHY MUSIC, INC.,	Date: June 27, 2023 Time: 9:00 a.m.
2	Counterclaimant, v.	Dept.: Courtroom 4 (7 <sup>th</sup> Floor) 2500 Tulare Street Fresno, CA 93721 Judge: Hon. Jennifer L. Thurston
4	VELLOWICANE INC. COLONIZE	_
5	YELLOWCAKE, INC.; COLONIZE MEDIA, INC; JOSE DAVID HERNANDEZ; and JESUS	
6	CHAVEZ SR, ´	
7	Counter-Defendants.	
8		
9		
	Counter-Defendants.	

In accordance with Local Rule 56-260(a) of this Court, Plaintiff and Counterdefendant, Yellowcake, Inc. ("Yellowcake"), and Counterdefendants, Colonize Media, Inc. ("Colonize") and Jose David Hernandez ("Hernandez"), submit the following Response (the "Response") to Defendant and Counterplaintiff Hyphy Music, Inc.'s ("Hyphy") Separate Statement of Undisputed Facts In Support of Defendant/Counterclaimant's Motion for Summary Judgment. For the Court's convenience Yellowcake, Colonize and Hernandez will adopt Hyphy's defined terms unless otherwise indicated for the purpose of this Response only.

## I. THE COMPLAINT MUST BE DISMISSED

A. Yellowcake's First Claim For Copyright Infringement Fails

Because Yellowcake Does Not Have Standing to Sue Hyphy

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
1. Defendant/Counterclaimant	Undisputed.
HYPHY MUSIC, INC. ("Hyphy")	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1 2	and Supporting Evidence:	Supporting Evidence:
3	is a record label in the business of collaborating with recording artists	
4	to produce, distribute, and otherwise	
5	exploit sound and audiovisual	
	recordings, coupled with artwork.	
6 7	Declaration of John Begakis (" <i>Begakis Decl.</i> ") at ¶ 8, Exhibit "G" thereto, Jose	
8	Martinez Deposition Transcript	
9	(" <i>Martinez Depo</i> ") at 13:6-14:6.  2. Counter-Defendant JESUS	Undisputed that Chavez is the lead
10	CHAVEZ, SR (" <i>Chavez</i> ") is the	singer when he performs with his
11	lead singer of the Spanish-language musical group Los Originales De	backing band, Los Originales De San Juan, and he recorded the six albums that
12	San Juan (the " <i>Group</i> ").	is the subject of this action, titled: (i) Los
13	Begakis Decl. at ¶ 13, Exhibit "L"	Originales de San Juan- "El Campesino"; (ii) Los Originales de San
14	thereto, Jesus Chavez, Sr. Deposition,	Juan-"Corridos de Poca M"; (iii) Los
15	Volume I (" <i>Chavez Depo I</i> ") at 25:13-14; Begakis Decl. at ¶ 14, Exhibit "M"	Originales de San Juan-"En Vivo Desde La Cantina de Mi Barrio"; (iv) Los
16	thereto, Jesus Chavez, Sr. Deposition,	Originales de San Juan-"Nuestra
17	Volume II (" <i>Chavez Depo II</i> ") at 16:22-17:5.	Historia En Vivo"; (v) Los Originales de San Juan- "Amigos y Contrarios"; and
18		(vi) Los Originales de San Juan-"Naci
19		Con Suerte de Rey Con Mariachi" (collectively "Albums").
20		
21		Disputes to the extent it implies lead singer was Chavez's only role in Los
22		Originales De San Juan. Chavez is Los
23		Originales De San Juan's sole founder, and principal. Chavez Decl., Dkt. 46-2
24		at ¶ 3; Defendants' Counterclaim, Dkt. 7
25		at ¶ 15 (referring to Chavez as "the founder and principal"); Defendants'
26		First Amended Counterclaim, Dkt. 15 at
27		¶ 15 (same).
28		Chavez was the sole producer, sole

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
	and Supporting Evidence:	Supporting Evidence:
		author and sole creator of the sound
		recordings of the Albums and therefore possessed all original rights, title and
		interest in the sound recordings of the
		Albums. Declaration of Jesus Chavez, Sr. (the "Chavez Decl."), Dkt. 46-2 at ¶¶
		8-21; Declaration of Hector Rosales (the "Rosales Decl."), Dkt. 46-1 at ¶¶ 7-10;
		Martinez Depo. at 60:5-61:2
		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
		Con Mariachi").
3.	3. The Group operates as a co-equal partnership comprised of Chavez	Undisputed Flores formerly played the accordion, and that Vargas formerly
	and fellow band members Domingo	played the drums at times for Chavez
	Torres Flores (" <i>Flores</i> "), who plays the accordion, and Alfonso Vargas	when Chavez performed with his backing band, Los Originales De San
	("Vargas"), who plays the drums.	Juan.
В	Begakis Decl. at ¶ 13, Exhibit "L"	Disputes that either Flores or Vargas
	hereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶	were co-equal partners in Los Originales De San Juan. Chavez was the sole
$\parallel 1$	1, Exhibit "J" thereto, Deposition	producer, sole author and sole creator of
1111		the sound recordings of the Albums and therefore possessed all original rights
10	6; Begakis Decl. at ¶ 12, Exhibit "K"	title and interest in the sound recordings
	1	
	<b>Depo</b> ") at 47:15-25, 48:19-23.	7-10; Martinez Depo. at 60:5-61:2
		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
		Con Mariachi").
4	4. In or about February 2013 Hyphy	Disputes the Albums were created
	and the Group began working	pursuant to the alleged Agreement. In or
	together to co-create various sound recordings to be embodied on	about 2013, Chavez, and Chavez alone, entered into an oral distribution
1 T D th	11, Exhibit "J" thereto, Deposition  Transcript of Alfonso Vargas ("Vargas Depo") at 17:16-19, 27:17-22, 143:14-16; Begakis Decl. at ¶ 12, Exhibit "K" hereto, Deposition Transcript of Domingo Torres Flores ("Flores Depo") at 47:15-25, 48:19-23.  4. In or about February 2013, Hyphy and the Group began working together to co-create various sound	producer, sole author and sole creator the sound recordings of the Albums at therefore possessed all original rights title and interest in the sound recording of the Albums. Chavez Decl., Dkt. 4 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in recording of -"Naci Con Suerte de Recon Mariachi").  Disputes the Albums were created pursuant to the alleged Agreement. It about 2013, Chavez, and Chavez alor

	Hambala Hadimarkad Makarial Factor	Once and a Develop Description of
1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	multiple albums, which they orally agreed were to be owned by Hyphy	agreement, not an oral recording agreement, with Hyphy. Chavez Decl.,
4	(the "Agreement").	Dkt. 46-2 at ¶ 7.
5	Declaration of Jose Martinez	The cited deposition testimony of
6	("Martinez Decl.") at ¶ 3; Decl. at ¶ 13,	Chavez does not support statement #4
7	Exhibit "L" thereto, Chavez Depo I at 34:7-11; Decl. at ¶ 14, Exhibit "M"	inasmuch as Chavez's testimony that an Album was recorded "with Hyphy"
8	thereto, Chavez Depo II at 19:14-17,	refers to such Album as being part of the
9	32:16-20, 35:12-21.	distribution agreement between Chavez and Hyphy.
10		Defendant consistently confirmed in
11		both versions of its Counterclaims that the alleged oral agreement was between
13		only Hyphy and Chavez. Defendant's
14		Counterclaim, Dkt. 7 at ¶¶ 15-17; Defendant's First Amended
15		Counterclaim, Dkt. 15 at ¶¶ 15-17.
16		Moreover, Martinez, the person who
17		made the alleged oral agreement on behalf of Defendant, further confirmed,
18		repeatedly, under penalty of perjury, in
19		his Declaration in support of Reply to Counter-Defendants' Challenge to the
20		Validity of Certain Copyright
21		Registrations (the "August 2021 Martinez Reply Decl."), that the alleged
22		oral agreement was between only Hyphy
23		and Chavez. August 2021 Martinez
24		Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
25		Defendant confirmed in other of its
26		filings with the Court that the alleged oral agreement was between only Hyphy
27		and Chavez. Hyphy's Opposition to
		Yellowcake's Motion to Dismiss
28		Hyphy's Counterclaims (the "Hyphy

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
3		Opp. To MTD"), Dkt. 27 at pg. 1 ln. 27 –
4		pg. 2 ln. 5; Hyphy's Reply to Counterdefendants' Challenge to the
5		Validity of Certain Copyright
6		Registrations (the "August 2021 Hyphy Reply"), Dkt. 45 at pg. 1 lns. 16-18.
7		Florez and Vargas did not possess any
8		alienable right, title or interest in the
9		Albums. Chavez was the sole producer, sole author and sole creator of the sound
10		recordings of the Albums and therefore possessed all original rights, title and
11		interest in the sound recordings of the
12		Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
13		10; Martinez Depo. at 60:5-61:2
14		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
15		Con Mariachi").
16		Neither Hyphy nor anyone affiliated with
17		Hyphy provided any original creative input into the recording of the Albums,
18 19		provided any original material for the
		sound recordings of the Albums or exercised any artistic, production or
20   21		recording control over the Albums.
21		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
23		Rosaics Deci., Dkt. 40-1 at       /-10.
24		Chavez never had an agreement or understanding with Hyphy, or anyone
25		else, that it would be deemed a co-author
26		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
27	5. The albums created pursuant to the	Disputes. Six, not five, albums are the
28	Agreement were entitled (1) "Amigos y Contrarios"; (2)	subject of Yellowcake's claims, <i>i.e.</i> , the six "Albums" identified in Yellowcake's
20	Annigos y Contrarios, (2)	SIA AIDUINS IUCIUNEU III I ENOWEAKE S

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1 2	and Supporting Evidence:	Supporting Evidence:
	"Corridos de Poca M"; (3) "El	response #2 above. Further disputes the
3	Campesino"; (4) "Desde La Cantina	Albums were created pursuant to the
4	de Mi Barrio (En Vivo)"; and (5)	alleged Agreement. In or about 2013,
5	"Nuestra Historia (En Vivo)" (collectively, the " <i>Los Originales</i>	Chavez, and Chavez alone, entered into an oral distribution agreement, not an
6	Albums" or "Albums").	oral recording agreement, with Hyphy.
	120000000 01 120000000 ).	Chavez Decl., Dkt. 46-2 at ¶ 7.
7	Martinez Decl. at ¶ 4; Begakis Decl. at	
8	¶ 8, Exhibit "G" thereto, Martinez Depo	Defendant consistently confirmed in
9	at 44:7-23, 51:22-25.	both versions of its Counterclaims that
10		the alleged oral agreement was between only Hyphy and Chavez. Defendant's
		Counterclaim, Dkt. 7 at ¶¶ 15-17;
11		Defendant's First Amended
12		Counterclaim, Dkt. 15 at ¶¶ 15-17.
13		Moreover, Martinez, the person who
14		made the alleged oral agreement on
		behalf of Defendant, further confirmed,
15		repeatedly, under penalty of perjury, in
16		the August 2021 Martinez Reply Decl.,
17		that the alleged oral agreement was between only Hyphy and Chavez.
18		August 2021 Martinez Reply Decl., Dkt.
19		45-1 at ¶¶ 2, 4, 7, 8.
20		Defendant confirmed in other of its
21		filings with the Court that the alleged oral agreement was between only Hyphy
22		and Chavez. Hyphy's Opposition to
23		Yellowcake's Motion to Dismiss
		Hyphy's Counterclaims. Hyphy Opp. To
24		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
25		pg. 1 lns. 16-18.
26		
27		Florez and Vargas did not possess any
28		alienable right, title or interest in the Albums. Chavez was the sole producer,
20		Mounts. Chavez was the sole producer,

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1 2	and Supporting Evidence:	Supporting Evidence:
3		sole author and sole creator of the sound
4		recordings of the Albums and therefore possessed all original rights, title and
5		interest in the sound recordings of the
6		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
7		Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the recording of - " <i>Naci</i> "
8		Con Suerte de Rey Con Mariachi").
9		Neither Hyphy nor anyone affiliated with
10		Hyphy provided any original creative input into the recording of the Albums,
11		provided any original material for the
12		sound recordings of the Albums or exercised any artistic, production or
13		recording control over the Albums.
14		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
15		
16		Chavez never had an agreement or understanding with Hyphy, or anyone
17		else, that it would be deemed a co-author
18		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
19	6. One of the other two albums identified in Yellowcake's	Undisputed.
20 21	Complaint, entitled "Chuy Chavez y	
22	Sus Amigos," has no connection to this dispute and wasn't even	
23	recorded by Chavez.	
24	Martinez Decl. at ¶ 4; Begakis Decl. at	
25	¶ 8, Exhibit "G" thereto, Martinez Depo at 44:24:-9, 154:11-155:25.	
26	7. Though this Agreement was not	Disputes the Albums were created
27 28	initially memorialized in writing, Flores and Vargas understood that such Agreement existed.	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone, entered into an oral distribution
_0	such Agreement existed.	Chara mio an oral distribution

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 5. Declaration of	agreement, not an oral recording agreement, with Hyphy. Chavez Decl.,
4	Domingo Torres Flores ("Flores Decl.") at ¶ 3; Declaration of Alfonso	Dkt. 46-2 at ¶ 7.
5	Vargas ("Vargas Decl.") at $\P$ 3.	Defendant consistently confirmed in both versions of its Counterclaims that
7		the alleged oral agreement was between only Hyphy and Chavez. Defendant's
8		Counterclaim, Dkt. 7 at ¶¶ 15-17;
9		Defendant's First Amended Counterclaim, Dkt. 15 at ¶¶ 15-17.
10		Moreover, Martinez, the person who
12		made the alleged oral agreement on behalf of Defendant, further confirmed,
13		repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl.,
14		that the alleged oral agreement was
15		between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt.
16		45-1 at $\P\P$ 2, 4, 7, 8.
17 18		Defendant confirmed in other of its filings with the Court that the alleged
19		oral agreement was between only Hyphy
20		and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss
21		Hyphy's Counterclaims. Hyphy Opp. To
22		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
23		pg. 1 lns. 16-18.
24		Florez and Vargas did not possess any
25		alienable right, title or interest in the
26		Albums. Chavez was the sole producer, sole author and sole creator of the sound
27		recordings of the Albums and therefore
28		possessed all original rights, title and interest in the sound recordings of the

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1	and Supporting Evidence:	Supporting Evidence:
2		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
3		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
4		involvement in the recording of - "Naci
5		Con Suerte de Rey Con Mariachi").
6 7		Neither Hyphy nor anyone affiliated with
		Hyphy provided any original creative input into the recording of the Albums,
8		provided any original material for the
10		sound recordings of the Albums or exercised any artistic, production or
11		recording control over the Albums.
12		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
13		
14		Chavez never had an agreement or understanding with Hyphy, or anyone
		else, that it would be deemed a co-author
15 16		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
17	8. Flores and Vargas, as co-equal	Disputes that either Flores or Vargas
18	members of the Group, also intended that all rights in and to	were co-equal partners in Los Originales De San Juan.
19	their recording services rendered	De San Juan.
	pursuant to the Agreement be	Disputes the Albums were created
20	conveyed Hyphy.	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone,
21	Martinez Decl. at ¶ 4. Flores Decl. at ¶¶	entered into an oral distribution
22	3-5; Vargas Decl. at ¶¶ 3-5.	agreement, not an oral recording agreement, with Hyphy. Chavez Decl.,
23		Dkt. 46-2 at ¶ 7.
24		The Vargas Decl. and the Flores Decl.
25		cited by Hyphy does not support
26		statement # 8 inasmuch as neither declarant states he is a "co-equal"
27		member of Los Originales de San Juan,
28		or state anything else therein that has a

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	<b>Supporting Evidence:</b>
3		similar meaning to the quoted language.
4		They merely state they provided backing musician services by playing their
5		instrument in the creation of the Albums;
6		they do not state that they personally provided any original or creative
7		material that was incorporated into the
		sound recordings of the Albums, or provide any description of same. <i>See</i>
8		generally Florez Decl.; Vargas Decl.
9		Chavez is Les Originales De San Juan's
10		Chavez is Los Originales De San Juan's sole founder, and principal. Chavez
11		Decl., Dkt. 46-2 at ¶ 3; Defendants'
12		Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the founder and principal");
13		Defendants' First Amended
14		Counterclaim, Dkt. 15 at ¶ 15 (same).
15		Florez and Vargas did not possess any
16		alienable right, title or interest in the Albums. Chavez was the sole producer,
17		sole author and sole creator of the sound
18		recordings of the Albums and therefore possessed all original rights, title and
19		interest in the sound recordings of the
20		Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
21		10; Martinez Depo. at 60:5-61:2
22		(disclaiming Hyphy's involvement in the
23		recording of - "Naci Con Suerte de Rey Con Mariachi").
24 9	9. Flores and Vargas also later	Disputes Florez and Vargas possessed
25	confirmed their belief and intent to convey all rights to Hyphy by	any alienable right, title or interest in the Albums. Chavez was the sole producer,
26	executing enforceable Copyright	sole author and sole creator of the sound
27		
28	"Assignments").	interest in the sound recordings of the
27	Assignment Agreements on or about March 22, 2022 (collectively, the	recordings of the Albums and there possessed all original rights, title an

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
3 4	Martinez Decl. at ¶ 5, Exhibit "A" thereto.	Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
5		(disclaiming Hyphy's involvement in the recording of -"Naci Con Suerte de Rey Con Mariachi").
7 8		Prior to 2019 Chavez had never agreed to alienate any of his ownership interest in the Albums to anyone. Chavez Decl.,
9 10		Dkt. 46-2 at ¶¶ 14. On or about March 21, 2019, Chavez sold the entirety of his
11 12		rights, title and interest in the copyrights of the sound recordings of the Albums to Yellowcake. Chavez Decl., Dkt. 46-2 at
13		¶¶ 15; Asset Purchase Agreement, Dkt. 83-3.
14   15	10. It should be noted here that Flores and Vargas were plainly joint	Disputes that either Flores or Vargas were joint authors in the Albums, that
16	authors of the Albums, including based on the fact that Flores and	they were equally involved in all of Los Originales De San Juan's activities or
17   18	Vargas were equally involved in all activities of the Band, which existed	that same existed as an unincorporated partnership in which all members were
19	as an unincorporated partnership in which all Band members were joint owners, participants and	joint owners, participants and contributors, and any of their related testimony is self-serving and conclusory.
20   21	Contributors.	Disputes the Albums were created
22	Begakis Decl. at ¶ 13, Exhibit "L" thereto, Chavez Depo I at 18:23-19:3;	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone, entered into an oral distribution
23 <b> </b> 24 <b> </b>	Begakis Decl. at ¶ 11, Exhibit "J" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20,	agreement, not an oral recording
24 25	143:7-10, 143:14-10, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "K" thereto, Flores Depo	agreement, with Hyphy. Chavez Decl., Dkt. 46-2 at ¶ 7.
26	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-	The testimony cited by Hyphy does not
27 28	13, 85:25-86:11, 86:13-21.	support statement # 10 inasmuch as neither Flores nor Vargas testifies they were involved in all activities of Los

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1 2	and Supporting Evidence:	Supporting Evidence:
		Originales de San Juan, or that they
3		personally provided any original or
4		into the sound recordings of the Albums,
5		or provide any description of same.
6		Chavez is Los Originales De San Juan's
7		sole founder, and principal. Chavez
8		Decl., Dkt. 46-2 at ¶ 3; Defendants'
9		Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the founder and principal");
10		Defendants' First Amended
11		Counterclaim, Dkt. 15 at ¶ 15 (same).
12		Florez and Vargas did not possess any
13		alienable right, title or interest in the Albums. Chavez was the sole producer,
14		sole author and sole creator of the sound
15		recordings of the Albums and therefore
16		possessed all original rights, title and interest in the sound recordings of the
17		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
18		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
19		(disclaiming Hyphy's involvement in the
20		recording of - "Naci Con Suerte de Rey Con Mariachi").
21	11. It should be noted here that Flores	Disputes that either Flores or Vargas
22	and Vargas were plainly joint authors of the Albums, including	were joint authors in the Albums or contributed to their creation, or that they
	based on the fact that Flores and	were equally credited on the Albums and
23	Vargas were equally credited on all	any of their related testimony is self-
24	Albums in which each of them made contributions.	serving and conclusory.
25		Disputes the Albums were created
26	See Begakis Decl. at ¶ 11, Exhibit "J" thereto, Vargas Depo at 27:17-22,	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone,
27	143:7-10, 143:14-16, 143:17-20,	entered into an oral distribution
28	143:25-144:3, 144:4-7; Begakis Decl. at	agreement, not an oral recording

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1 2	and Supporting Evidence:	Supporting Evidence:
3	¶ 12, Exhibit "K" thereto, Flores Depo	agreement, with Hyphy. Chavez Decl.,
4	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	Dkt. 46-2 at ¶ 7. The testimony cited by Hyphy does not
5		support statement # 11 inasmuch as
6		neither Flores nor Vargas testifies they personally provided any original or
7		creative material that was incorporated into the sound recordings of the Albums,
8		or provide any description of same.
9		Chavez is Los Originales De San Juan's
10		sole founder, and principal. Chavez Decl., Dkt. 46-2 at ¶ 3; Defendants'
12		Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the founder and principal");
13		Defendants' First Amended
14		Counterclaim, Dkt. 15 at ¶ 15 (same).
15		Florez and Vargas did not possess any alienable right, title or interest in the
16		Albums. Chavez was the sole producer,
17		sole author and sole creator of the sound recordings of the Albums and therefore
18		possessed all original rights, title and
19		interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
20		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
21		(disclaiming Hyphy's involvement in the
22		recording of - "Naci Con Suerte de Rey Con Mariachi").
23	10 T. 1 111	ŕ
24	12. It should be noted here that Flores and Vargas were plainly joint	Disputes that either Flores or Vargas were joint authors in the Albums, or that
25	authors of the Albums, including	they shared equally in the profits of Los
26	based on the fact that Flores and Vargas shared equally in all profits	Originales De San Juan or were granted equal access to inspect records.
27 28	of the Band, and were granted equal	-
28	access to inspect all records related	Disputes the Albums were created

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1	and Supporting Evidence:	Supporting Evidence:
2		
3	to the Band's receipt of all such profits.	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone,
4		entered into an oral distribution
5	Begakis Decl. at ¶ 14, Exhibit "M" thereto, Chavez Depo II at 20:20-21:16,	agreement, not an oral recording agreement, with Hyphy. Chavez Decl.,
6	26:13-20, 31:8-16, 33:18-34:1, 38:8-18,	Dkt. 46-2 at ¶ 7.
7	41:13-42:2; Begakis Decl. at ¶ 11,	, and the second
	Exhibit "J" thereto, Vargas Depo at	The Vargas Decl. and the Flores Decl.
8	27:17-22, 143:7-10, 143:14-16, 143:17- 20, 143:25-144:3, 144:4-7; Begakis	cited by Hyphy does not support statement # 8 inasmuch as neither
9	Decl. at ¶ 12, Exhibit "K" thereto,	declarant states he is a "co-equal"
10	Flores Depo at 47:15-25, 82:13-15,	member of Los Originales de San Juan,
11	82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	or state anything else therein that has a similar meaning to the quoted language.
12		They merely state they provided backing
13		musician services by playing their instrument in the creation of the Albums;
14		they do not state that they personally
15		provided any original or creative
		material that was incorporated into the sound recordings of the Albums, or
16		provide any description of same. See
17		generally Florez Decl.; Vargas Decl.
18		Chavez is Los Originales De San Juan's
19		sole founder, and principal. Chavez
20		Decl., Dkt. 46-2 at ¶ 3; Defendants'
21		Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the founder and principal");
22		Defendants' First Amended
23		Counterclaim, Dkt. 15 at ¶ 15 (same).
24		Florez and Vargas did not possess any
25		alienable right, title or interest in the
26		Albums. Chavez was the sole producer, sole author and sole creator of the sound
27		recordings of the Albums and therefore
28		possessed all original rights, title and interest in the sound recordings of the
		morest in the sound recordings of the

$_{1}\parallel$	<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
	and Supporting Evidence:	Supporting Evidence:
		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
		recording of - "Naci Con Suerte de Rey
		Con Mariachi").
		The cited deposition testimony of Chavez does not support statement #12
		inasmuch as he testified that he paid
		Vargas and Flores a weekly salary.
	13. Yellowcake is a competing record	Disputes. Yellowcake is primarily
	label and distributor of sound	engaged in the business of, among other
	recordings, utilizing Colonize as its "distribution arm" to release and	things, purchasing, owning, licensing and exploiting intellectual property
	exploit rights that Yellowcake	rights. Declaration of Kevin Berger (the
	acquires.	"Berger Decl."), Dkt. 82-14 at ¶ 3.
		Colonize is a digital music distributor
	Begakis Decl. at ¶ 9, Exhibit "H"	that enters into contracts with numerous
	thereto, Deposition Transcript of Kevin Berger (" <i>Berger Depo</i> ") at 91:19-23;	different record labels and performers.  Declaration of Jose David Hernandez
	Begakis Decl. at ¶ 10, Exhibit "I"	(the "Hernandez Decl."), Dkt. 82-16 at
	thereto, Deposition Transcript of Jose	¶¶ 3-6. Yellowcake and Colonize are
	David Hernandez, Volume I	two completely separate entities with
	("Hernandez Depo I") at 77:19-21.	two different owners.
	14. Hernandez is a co-owner of both Yellowcake and Colonize.	Undisputed that Hernandez is an owner of Colonize and that he once was an
	i chowcase and Colonize.	owner of Yellowcake.
	Begakis Decl. at ¶ 10, Exhibit "I"	
	thereto, Hernandez Depo I at 51:9-11,	
	116:18-117:14.	
	15. In his position as co-owner of both Yellowcake and Colonize,	Disputes. The cited deposition
	Hernandez has admitted that both	testimony of Hernandez does not support statement #15 inasmuch as Hernandez
	entities have operated – and	testified that Colonize "gets some stuff
	continue to operate – as one single	of value" for distributing Yellowcake's
	economic entity, with common	music. Hernandez Depo I at 80:13.
	ownership, common business	
	operations, common office space,	

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	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1 2	and Supporting Evidence:	Supporting Evidence:
	common staff, and many other	
3	common resources.	
4		
5	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 80:3-20.	
6	16. In or about March 2019, Hernandez	Disputes. The cited deposition
7	approached Chavez about selling the Los Originales Albums to	testimony of Chavez does not support statement #16 inasmuch as Chavez
8	Yellowcake.	testified he does not remember when
9		Hernandez approached him, but it was in
	Begakis Decl. at ¶ 14, Exhibit "M"	the year 2020 (Chavez Depo I at 78:9-
10	thereto, Chavez Depo II at 77:13-17,	25). The cited deposition testimony of
11	79:7-9, 79:17-80:2, 81:7-16; Begakis Decl. at ¶ 10, Exhibit "I" thereto,	Hernandez does not support statement #16 inasmuch as Hernandez does not
12	Hernandez Depo I at 148:24-149:5.	testify that he approached Chavez, and
13		he testifies "it could have been 2018"
14		when he first discussed with Chavez purchasing the Albums (Hernandez
		Depo I at 148:24-149:5).
15		
16		On or about March 21, 2019, Chavez
17		sold the entirety of his rights, title and interest in the copyrights of the sound
18		recordings of the Albums to Yellowcake.
		Chavez Decl., Dkt. 46-2 at ¶¶ 15; Asset
19		Purchase Agreement, Dkt. 83-3.
20	17. Hernandez had previously worked	Disputes. Hernandez never worked for
21	with Hyphy and had secretly gained	Hyphy, and statement # 17 is
22	valuable information on Hyphy's business and relationship with	unsubstantiated and self-serving.
	Chavez. Hernandez therefor knew	The cited paragraph in the Martinez
23	that Hyphy only had an oral	Decl. stating that Hernandez "used to
24	agreement with the Group.	work with Hyphy" and therefore
25	M C D 1 (#2 D 1: D 1	"obtained valuable information
26	Martinez Decl. at ¶ 3; Begakis Decl. at ¶ 8. Exhibit "G" thereto. Martinez Deno.	including the knowledge Hyphy's
	¶ 8, Exhibit "G" thereto, Martinez Depo at 26:2-12.	Agreement with the Group was oral" is misleading because Martinez testified
27 28		Hernandez was merely an initial third- party distributer of Hyphy music

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		(Martinez Depo. at 26:6-12), and such
		statement is pure speculation as Martinez also testified that Hyphy's business
4		dealings with Hernandez began and
5		ended in 2010, approximately three years
6		prior to the existence of the alleged oral
7		agreement (Martinez Depo. at 15:10-15, 26:20-23).
8	18. Hernandez approached and	Disputes. The cited testimony of Chavez
9	convinced Chavez, without Hyphy	does not refer to any knowledge his
10	or the rest of the Group's knowledge, to assign the Albums to	backing musicians may or may not have had regarding the alleged conversation.
	Yellowcake in exchange for	Moreover, Chavez testified that the
11	payment of \$500,000.	alleged transaction was a purchase, not
12	Begakis Decl. at ¶ 14, Exhibit "M"	an assignment. The cited testimony of Hernandez is unrelated to statement #18.
13	thereto, Chavez Depo II at 77:13-17,	Tremandez is difference to statement #16.
14	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	Further disputes to the extent statement #
15	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 107:4-20.	18 implies that anyone other than Chavez possessed the right to convey
16	thereto, fremandez Depo 1 at 107.4-20.	any right in the Albums. Defendant
17		consistently confirmed in both versions
		of its Counterclaims that the alleged oral
18		agreement was between only Hyphy and Chavez. Defendant's Counterclaim, Dkt.
19		17 at ¶¶ 15-17; Defendant's First
20		Amended Counterclaim, Dkt. 15 at ¶¶
21		15-17.
22		Moreover, Martinez, the person who
23		made the alleged oral agreement on
24		behalf of Defendant, further confirmed, repeatedly, under penalty of perjury, in
25		the August 2021 Martinez Reply Decl.,
		that the alleged oral agreement was
26		between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt.
27		45-1 at $\P\P$ 2, 4, 7, 8.
28		

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1 2	and Supporting Evidence:	Supporting Evidence:
3		Defendant confirmed in other of its
4		filings with the Court that the alleged oral agreement was between only Hyphy
5		and Chavez. Hyphy's Opposition to
6		Yellowcake's Motion to Dismiss Hyphy's Counterclaims. Hyphy Opp. To
7		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
8		pg. 1 lns. 16-18.
9		Florez and Vargas did not possess any
10		alienable right, title or interest in the Albums. Chavez was the sole producer,
11		sole author and sole creator of the sound recordings of the Albums and therefore
12 13		possessed all original rights, title and
14		interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
15		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
16		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
17		recording of - "Naci Con Suerte de Rey
18		Con Mariachi").
19		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
20		input into the recording of the Albums,
21		provided any original material for the sound recordings of the Albums or
22		exercised any artistic, production or
23		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
24		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
25		Chavez never had an agreement or
26		understanding with Hyphy, or anyone else, that it would be deemed a co-author
27 28		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
28		ן מו און א 8-13, 19.

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1	and Supporting Evidence:	Supporting Evidence:
2	19. Chavez and Yellowcake codified	Undisputed Chavez and Yellowcake
3	their purported agreement via an	entered into the Asset Purchase
4	"Asset Purchase and Assignment	Agreement set forth at Dkt. 83-3.
5	Agreement" executed on or about	
	March 21, 2019 (the "Asset Purchase Agreement").	
6	1 urchuse Agreement ).	
7	Begakis Decl. at ¶ 7, Exhibit "F"	
8	thereto, Plaintiff/Counterdefendant's	
9	Document Production (PLF000021-	
10	PLF000039).  20. In Section 13.e. of the Asset	Undisputed.
	Purchase Agreement, Chavez	Chaispatea
11	represented and warranted to	
12	Yellowcake that Chavez was "the	
13	only owner of" the Albums, and possessed "good and marketable	
14	title" thereto at the time of sale.	
15		
	Begakis Decl. at ¶ 7, Exhibit "F" thereto, Plaintiff/Counterdefendant's	
16	Document Production (PLF00024).	
17	21. Chavez, however, never obtained	Disputes statement #21 because it
18	signed written agreements from	incorrectly assumes Flores, Vargas and
19	Flores, Vargas or Hyphy acquiring	Hyphy possessed "respective
20	each party's respective contributions to, and rights in, the	contributions to, and rights in, the Albums and sound recordings embodied
	Albums and sound recordings	thereon"; which they did not.
21	embodied thereon.	
22		Further disputes to the extent statement #
23	Begakis Decl. at ¶ 6, Exhibit "E" thereto, Yellowcake Interrogatory	21 implies that anyone other than Chavez possessed the right to convey
24	Responses at pp. 4-5; Begakis Decl. at ¶	any right in the Albums. Defendant
25	7, Exhibit "F" thereto, Yellowcake	consistently confirmed in both versions
	Responses to Request for Production at	of its Counterclaims that the alleged oral
26	p. 4.	agreement was between only Hyphy and
27		Chavez. Defendant's Counterclaim, Dkt. 7 at ¶¶ 15-17; Defendant's First
28		Amended Counterclaim, Dkt. 15 at ¶¶

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	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
3		15-17.
		Moreover, Martinez, the person who
4		made the alleged oral agreement on
5		behalf of Defendant, further confirmed, repeatedly, under penalty of perjury, in
6		the August 2021 Martinez Reply Decl.,
7		that the alleged oral agreement was
8		between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt.
9		45-1 at ¶¶ 2, 4, 7, 8.
10		Defendant confirmed in other of its
11		filings with the Court that the alleged
12		oral agreement was between only Hyphy and Chavez. Hyphy's Opposition to
13		Yellowcake's Motion to Dismiss
14		Hyphy's Counterclaims. Hyphy Opp. To MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.
15		5; August 2021 Hyphy Reply, Dkt. 45 at
16		pg. 1 lns. 16-18.
17		Florez and Vargas did not possess any
18		alienable right, title or interest in the
19		Albums. Chavez was the sole producer, sole author and sole creator of the sound
20		recordings of the Albums and therefore
21		possessed all original rights, title and interest in the sound recordings of the
22		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
23		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
24		involvement in the recording of - "Naci
25		Con Suerte de Rey Con Mariachi").
26		Neither Hyphy nor anyone affiliated with
27		Hyphy provided any original creative input into the recording of the Albums,
28		provided any original material for the

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	<b>Supporting Evidence:</b>
	sound recordings of the Albums or exercised any artistic, production or recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or understanding with Hyphy, or anyone else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.

## B. <u>Yellowcake's First Claim for Copyright Infringement Fails</u> <u>Because Hyphy Is A Joint Owner In The Albums</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
22. Defendant/Counterclaimant HYPHY MUSIC, INC. ("Hyphy") is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings, coupled with artwork.	Undisputed.
Declaration of John Begakis (" <i>Begakis Decl.</i> ") at ¶ 8, Exhibit "G" thereto, Jose Martinez Deposition Transcript (" <i>Martinez Depo</i> ") at 13:6-14:6.	
23. Counter-Defendant JESUS CHAVEZ, SR (" <i>Chavez</i> ") is the lead singer of the Spanish-language musical group Los Originales De San Juan (the " <i>Group</i> ").	Undisputed that Chavez is the lead singer when he performs with his backing band, Los Originales De San Juan, and he recorded the six albums that is the subject of this action, titled: (i) Los Originales de San Juan- "El

	Hyphyla Undianuted Material Facts	Onnesing Pauty/s Despense and
1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 13, Exhibit "L" thereto, Jesus Chavez, Sr. Deposition,	Campesino"; (ii) Los Originales de San
4	Volume I (" <i>Chavez Depo I</i> ") at 25:13-	Juan-"Corridos de Poca M"; (iii) Los Originales de San Juan-"En Vivo Desde
5	14; Begakis Decl. at ¶ 14, Exhibit "M"	La Cantina de Mi Barrio"; (iv) Los
6	thereto, Jesus Chavez, Sr. Deposition, Volume II (" <i>Chavez Depo II</i> ") at	Originales de San Juan-"Nuestra Historia En Vivo"; (v) Los Originales de
7	16:22-17:5.	San Juan- "Amigos y Contrarios"; and
8		(vi) Los Originales de San Juan-"Naci Con Suerte de Rey Con Mariachi"
9		(collectively "Albums").
10		Disputes to the extent it implies lead
11		singer was Chavez's only role in Los Originales De San Juan. Chavez is Los
12		Originales De San Juan's sole founder,
13		and principal. Chavez Decl., Dkt. 46-2
14		at ¶ 3; Defendants' Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the
15		founder and principal"); Defendants'
16		First Amended Counterclaim, Dkt. 15 at ¶ 15 (same).
17		
18		Chavez was the sole producer, sole author and sole creator of the sound
19		recordings of the Albums and therefore
20		possessed all original rights, title and interest in the sound recordings of the
21		Albums. Declaration of Jesus Chavez,
22		Sr. (the "Chavez Decl."), Dkt. 46-2 at ¶¶ 8-21; Declaration of Hector Rosales (the
23		"Rosales Decl."), Dkt. 46-1 at ¶¶ 7-10;
		Martinez Depo. at 60:5-61:2
24		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
25		Con Mariachi").
26	24. The Group operates as a co-equal	Undisputed Flores formerly played the
27	partnership comprised of Chavez	accordion, and that Vargas formerly
28	and fellow band members Domingo	played the drums at times for Chavez

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Torres Flores (" <i>Flores</i> "), who plays the accordion, and Alfonso Vargas	when Chavez performed with his backing band, Los Originales De San
4	("Vargas"), who plays the drums.	Juan.
5 6	Begakis Decl. at ¶ 13, Exhibit "L" thereto, Chavez Depo I at 18:16-19:3,	Disputes that either Flores or Vargas were co-equal partners in Los Originales
7	20:8-16, 21:16-19; Begakis Decl. at ¶ 11, Exhibit "J" thereto, Deposition	De San Juan. Chavez was the sole producer, sole author and sole creator of
8	Transcript of Alfonso Vargas (" <i>Vargas Depo</i> ") at 17:16-19; 27:17-22; 143:14-	the sound recordings of the Albums and therefore possessed all original rights,
9	16; Begakis Decl. at ¶ 12, Exhibit "K"	title and interest in the sound recordings
10	thereto, Deposition Transcript of Domingo Torres Flores ("Flores	of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
11	<b>Depo</b> ") at 47:15-25, 48:19-23.	7-10; Martinez Depo. at 60:5-61:2
12		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
13		Con Mariachi").
14	25. In or about February 2013, Hyphy and the Group began working	Disputes the Albums were created pursuant to the alleged Agreement. In or
15	together to co-create various sound	about 2013, Chavez, and Chavez alone,
16	recordings to be embodied on multiple albums, which they orally	entered into an oral distribution agreement, not an oral recording
17 18	agreed were to be owned by Hyphy (the " <i>Agreement</i> ").	agreement, not an oral recording agreement, with Hyphy. Chavez Decl., Dkt. 46-2 at ¶ 7.
19	(the Agreement ).	DRt. 40-2 at    7.
20	Declaration of Jose Martinez ("Martinez Decl.") at ¶ 3; Begakis	The cited deposition testimony of Chavez does not support statement #4
21	Decl. at ¶ 13, Exhibit "L" thereto,	inasmuch as Chavez's testimony that an
22	Chavez Depo I at 34:7-11; Begakis Decl. at ¶ 14, Exhibit "M" thereto,	Album was recorded "with Hyphy" refers to such Album as being part of the
23	Chavez Depo II at 19:14-17, 32:16-20,	distribution agreement between Chavez
24	35:12-21.	and Hyphy.
25		Defendant consistently confirmed in
26		both versions of its Counterclaims that the alleged oral agreement was between
27		only Hyphy and Chavez. Defendant's
28		Counterclaim, Dkt. 7 at ¶¶ 15-17;

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Defendant's First Amended
4		Counterclaim, Dkt. 15 at ¶¶ 15-17.
5		Moreover, Martinez, the person who
6		made the alleged oral agreement on behalf of Defendant, further confirmed,
		repeatedly, under penalty of perjury, in
7		his Declaration in support of Reply to
8		Counter-Defendants' Challenge to the Validity of Certain Copyright
9		Registrations (the "August 2021
10		Martinez Reply Decl."), that the alleged
11		oral agreement was between only Hyphy and Chavez. August 2021 Martinez
12		Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
13		D-6146'1'416'4-
14		Defendant confirmed in other of its filings with the Court that the alleged
15		oral agreement was between only Hyphy
16		and Chavez. Hyphy's Opposition to
		Yellowcake's Motion to Dismiss Hyphy's Counterclaims (the "Hyphy
17		Opp. To MTD"), Dkt. 27 at pg. 1 ln. 27 –
18		pg. 2 ln. 5; Hyphy's Reply to Counterdefendants' Challenge to the
19		Validity of Certain Copyright
20		Registrations (the "August 2021 Hyphy
21		Reply"), Dkt. 45 at pg. 1 lns. 16-18.
22		Florez and Vargas did not possess any
23		alienable right, title or interest in the
24		Albums. Chavez was the sole producer, sole author and sole creator of the sound
25		recordings of the Albums and therefore
26		possessed all original rights, title and
		interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
27		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
5		recording of - "Naci Con Suerte de Rey Con Mariachi").
6		Neither Hyphy nor anyone affiliated with
7		Hyphy provided any original creative input into the recording of the Albums,
8		provided any original material for the sound recordings of the Albums or
9		exercised any artistic, production or
10		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
11		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
12		Chavez never had an agreement or
13		understanding with Hyphy, or anyone
14 15		else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
16	26. The albums created pursuant to the	at ¶¶ 8-13, 19. Disputes. Six, not five, albums are the
17	Agreement were entitled (1)	subject of Yellowcake's claims, i.e., the
18	"Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El	six "Albums" identified in Yellowcake's response #2 above. Further disputes the
19	Campesino"; (4) "Desde La Cantina	Albums were created pursuant to the
20	de Mi Barrio (En Vivo)"; and (5) "Nuestra Historia (En Vivo)"	alleged Agreement. In or about 2013, Chavez, and Chavez alone, entered into
21	(collectively, the "Los Originales	an oral distribution agreement, not an
22	Albums" or "Albums").	oral recording agreement, with Hyphy. Chavez Decl., Dkt. 46-2 at ¶ 7.
23	Martinez Decl. at ¶ 4; Begakis Decl. at	·
24	¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23, 51:22-25.	Defendant consistently confirmed in both versions of its Counterclaims that
25	23, 31.22 23.	the alleged oral agreement was between
26		only Hyphy and Chavez. Defendant's Counterclaim, Dkt. 7 at ¶¶ 15-17;
27		Defendant's First Amended
28		Counterclaim, Dkt. 15 at ¶¶ 15-17.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
3	with a supporting 11 through	zuppozung naturatur
4		Moreover, Martinez, the person who made the alleged oral agreement on
5		behalf of Defendant, further confirmed,
6		repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl.,
7		that the alleged oral agreement was
8		between only Hyphy and Chavez.
9		August 2021 Martinez Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
10		Defendant confirmed in other of its
10		filings with the Court that the alleged
12		oral agreement was between only Hyphy
13		and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss
14		Hyphy's Counterclaims. Hyphy Opp. To
15		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
16		pg. 1 lns. 16-18.
17		Florez and Vargas did not possess any
18		alienable right, title or interest in the
19		Albums. Chavez was the sole producer, sole author and sole creator of the sound
20		recordings of the Albums and therefore
21		possessed all original rights, title and interest in the sound recordings of the
22		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
23		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
24		involvement in the recording of - "Naci
		Con Suerte de Rey Con Mariachi").
25 26		Neither Hyphy nor anyone affiliated with
		Hyphy provided any original creative input into the recording of the Albums,
27		provided any original material for the
28		

$_{1}$	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
3		sound recordings of the Albums or
4		exercised any artistic, production or recording control over the Albums.
		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
5		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
6		Chavez never had an agreement or
7		understanding with Hyphy, or anyone
3		else, that it would be deemed a co-author
		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
,	27. One of the other two albums	Undisputed.
	identified in Yellowcake's	
	Complaint, entitled "Chuy Chavez y Sus Amigos," has no connection to	
$\ $	this dispute and wasn't even	
.	recorded by Chavez.	
·	Martinez Decl. at ¶ 4; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 44:24:-9, 154:11-155:25.  28. Unlike larger record labels,	Disputes. Chavez was the sole producer,
	however, Hyphy closely	sole author and sole creator of the sound
	collaborated with the Group to	recordings of the Albums and therefore
	create the Albums.	possessed all original rights, title and interest in the sound recordings of the
	Martinez Decl. at ¶ 6; Begakis Decl. at	Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
	¶ 8, Exhibit "G" thereto, Martinez Depo	Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
	at 75:6-76:25, 83:11-84:22, 84:24-85:8, 85:14-86:16.	Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the recording of - " <i>Naci</i> "
		Con Suerte de Rey Con Mariachi").
		Neither Hyphy nor anyone affiliated with
		Hyphy provided any original creative
		input into the recording of the Albums,
		provided any original material for the sound recordings of the Albums or
		exercised any artistic, production or
3		

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	recording control over the Albums.
	Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Rosales Deel., Dkt. 40-1 at       /-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
	at ¶¶ 8-13, 19.
29. For the first three (of five) of the	Disputes. Chavez was the sole producer,
Los Originales Albums, Hyphy	sole author and sole creator of the sound
helped determine the "theme" and overall creative direction of each	recordings of the Albums and therefore possessed all original rights, title and
Album.	interest in the sound recordings of the
	Albums. Chavez Decl., Dkt. 46-2 at ¶¶
Martinez Decl. at ¶ 6.	8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
	10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey
	Con Mariachi").
	N. 1. II. I. CCI. 4. I. 1.
	Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
	input into the recording of the Albums,
	provided any original material for the
	sound recordings of the Albums or
	exercised any artistic, production or recording control over the Albums.
	Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-author
	of the Albums. Chavez Decl., Dkt. 46-2
30. For the first three (of five) of the	at ¶¶ 8-13, 19. Disputes. The deposition transcript
Los Originales Albums, Hyphy	testimony cited by Hyphy does not

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
	and Supporting Evidence:	Supporting Evidence:
2	selected the songs to be included in	support statement # 30 inasmuch as such
3	each Album.	testimony relates only to the album
4	M C D 1 (FC D 1: D 1	titled, "Corridos de Poca M."
5	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	Moreover, Chavez was the sole
6	at 83:11-84:22.	producer, sole author and sole creator of
7		the sound recordings of the Albums and
8		therefore possessed all original rights, title and interest in the sound recordings
9		of the Albums. Chavez Decl., Dkt. 46-2
		at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
10		7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
11		recording of - "Naci Con Suerte de Rey
12		Con Mariachi").
13		Neither Hyphy nor anyone affiliated with
14		Hyphy provided any original creative
15		input into the recording of the Albums,
16		provided any original material for the sound recordings of the Albums or
17		exercised any artistic, production or
		recording control over the Albums.
18		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
19		Rosales Decl., Dkt. 40-1 at       /-10.
20		Chavez never had an agreement or
21		understanding with Hyphy, or anyone else, that it would be deemed a co-author
22		of the Albums. Chavez Decl., Dkt. 46-2
23		at ¶¶ 8-13, 19.
24	31. For the first three (of five) of the	Disputes. In or about 2013, Chavez, and
	Los Originales Albums, Hyphy selected the recording studio, and	Chavez alone, entered into an oral distribution agreement, not an oral
25	paid for all costs associated with the	recording agreement, with Hyphy
26	recording of each Album.	(Chavez Decl., Dkt. 46-2 at ¶ 7) whereby
27	Martinez Decl. at ¶ 6.	Hyphy paid for recording costs as part of such agreement.
28	Martinez Deel. at    0.	such agreement.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Moreover, Chavez was the sole
4		producer, sole author and sole creator of
5		the sound recordings of the Albums and therefore possessed all original rights,
6 7		of the Albums. Chavez Decl., Dkt. 46-2
8		at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
9		(disclaiming Hyphy's involvement in the
10		recording of - "Naci Con Suerte de Rey Con Mariachi").
11		NI '41 II 1 0001' 4 1 '41
12		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
13		input into the recording of the Albums,
14		provided any original material for the sound recordings of the Albums or
15		exercised any artistic, production or
16		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
17		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
18		Chavez never had an agreement or
19		understanding with Hyphy, or anyone
20		else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
21	22 F 4 C 44 (CC ) 64	at ¶¶ 8-13, 19.
22	32. For the first three (of five) of the Los Originales Albums, Hyphy	Disputes. The deposition transcript testimony cited by Hyphy does not
23	hired the sound engineer.	support statement # 32 inasmuch as it
24	Martinez Decl. at ¶ 6; Begakis Decl. at	does not refer to who hired Hector Rosales, who was the audio engineer for
25	¶ 8, Exhibit "G" thereto, Martinez Depo	the recording of "Amigos y Contrarios,"
26	at 59:21-60:7, 61:10-16.	"Corridos de Poca M," and "El Campesino."
27		-
28		Hector Rosales was engaged by Chavez

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		to act as audio engineer for the Albums. Rosales Decl., Dkt. 46-1 at ¶ 5.
4	33. For the first three (of five) of the	Disputes. In or about 2013, Chavez, and
5	Los Originales Albums, Hyphy paid the Group a substantial amount for	Chavez alone, entered into an oral distribution agreement, not an oral
6	recording the Albums.	recording agreement, with Hyphy, who
7	M ( D 1 (A)	paid Chavez in accordance with the
8	Martinez Decl. at ¶ 6.	terms of their oral distribution agreement (Chavez Decl., Dkt. 46-2 at ¶ 7).
9	34. And for the first three (of five) of	Disputes. The cited deposition
10	the Los Originales Albums, Hyphy oversaw and generally supervised	testimony of Martinez does not support statement #34 inasmuch as he testified
11	the recording and production of	Hyphy was merely "engaged" in
12	each Album.	production. Martinez Depo. at 86:7, 86:15.
13	Martinez Decl. at ¶ 6; Begakis Decl. at	
14	¶ 8, Exhibit "G" thereto, Martinez Depo at 85:14-86:16.	Moreover, Chavez was the sole
15	at 63:14-60:10.	producer, sole author and sole creator of the sound recordings of the Albums and
		therefore possessed all original rights,
16		title and interest in the sound recordings
17		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
18 19		7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
20		recording of - "Naci Con Suerte de Rey Con Mariachi").
21		Con Martaem ).
22		Neither Hyphy nor anyone affiliated with
		Hyphy provided any original creative input into the recording of the Albums,
23		provided any original material for the
24		sound recordings of the Albums or
25		exercised any artistic, production or recording control over the Albums.
26		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
27		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
28		

Supporting Evidence
Supporting Evidence:
Chavez never had an agreement or understanding with Hyphy, or anyone else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
Disputes. The cited deposition testimony of Martinez does not support statement #35 inasmuch as such testimony does not relate to the selection and payment for any venue.
Moreover, Chavez was the sole
producer, sole author and sole creator of the sound recordings of the Albums and
therefore possessed all original rights, title and interest in the sound recordings
of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
recording of - "Naci Con Suerte de Rey Con Mariachi").
Neither Hyphy nor anyone affiliated with
Hyphy provided any original creative input into the recording of the Albums,
provided any original material for the
sound recordings of the Albums or exercised any artistic, production or
recording control over the Albums.
Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
Chavez never had an agreement or
understanding with Hyphy, or anyone
else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	36. For the final two (of five) Albums (which are comprised of recordings	Disputes. The cited deposition testimony of Martinez does not support
4	from a previous live performance by the Group), Hyphy also selected the	statement #36 inasmuch as such testimony does not relate to the selection
5	songs to be performed at the live	of songs at a live performance.
6 7	performance and recorded for the Albums.	Moreover, Chavez was the sole
8	Martinez Decl. at ¶ 6; Begakis Decl. at	producer, sole author and sole creator of the sound recordings of the Albums and
9	¶ 8, Exhibit "G" thereto, Martinez Depo	therefore possessed all original rights,
10	at 75:6-25.	title and interest in the sound recordings of the Albums. Dkt. 46-2 at ¶¶ 8-21;
11		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
12		(disclaiming Hyphy's involvement in the
13		recording of - "Naci Con Suerte de Rey Con Mariachi").
14		
15		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
16		input into the recording of the Albums, provided any original material for the
17		sound recordings of the Albums or
18 19		exercised any artistic, production or recording control over the Albums.
20		Chavez Decl., Dkt. Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
21		
22		Chavez never had an agreement or understanding with Hyphy, or anyone
23		else, that it would be deemed a co-author
24		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
25	37. For the final two (of five) Albums (which are comprised of recordings	Disputes. Chavez was the sole producer, sole author and sole creator of the sound
26	from a previous live performance by	recordings of the Albums and therefore
27	the Group), Hyphy also directly employed, supervised, and directed	possessed all original rights, title and interest in the sound recordings of the
28	emproyed, supervised, and directed	interest in the sound recordings of the

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	the services of the sound engineer	Albums. Chavez Decl., Dkt. 46-2 at ¶¶
4	and videographer who each recorded the audio and video of the	8-21; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
5	live performance, respectively.	recording of - "Naci Con Suerte de Rey
		Con Mariachi").
6	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	Neither Hyphy nor anyone affiliated with
7	at 75:6-25.	Hyphy provided any original creative
8		input into the recording of the Albums,
9		provided any original material for the sound recordings of the Albums or
10		exercised any artistic, production or
11		recording control over the Albums.
12		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
13		
		Chavez never had an agreement or
14		understanding with Hyphy, or anyone else, that it would be deemed a co-author
15		of the Albums. Chavez Decl., Dkt. 46-2
16		at ¶¶ 8-13, 19.
17		Disputes. Statement #38 constitutes a
18		self-serving and unsubstantiated
19		statement, which is also inadmissible
20		because there is no evidence of Hyphy's personal knowledge of the activities of
21		any sound engineer or videographer who
22	20 F - 1 4 - C - 1 4 ( C C ) A 11	recorded any live performances.
	38. For the final two (of five) Albums (which are comprised of recordings	Disputes. Statement #38 constitutes a self-serving and unsubstantiated
23	from a previous live performance by	statement. The cited deposition
24	the Group), Hyphy also wrote a	testimony of Martinez does not support statement #38 inasmuch as such
25	script for the history of the band as presented at the live performance,	testimony does not relate to the writing
26	and hired a "MC"/commentator who	or narration of any script.
27	narrated the script.	
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 6; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo	
4	at 75:6-25.  39. For the final two (of five) Albums	Disputes Statement #20 constitutes a
5	(which are comprised of recordings	Disputes. Statement #39 constitutes a self-serving and unsubstantiated
6	from a previous live performance by the Group), Hyphy also re-recorded	statement, which is also irrelevant to Hyphy's claims of ownership of the
7	whole portions of the guitarist's	recordings. The cited deposition
8	contributions to the live	testimony of Martinez does not support
9	performance afterwards, using a	statement #39 inasmuch as such
10	new guitarist selected, hired and paid for by Hyphy.	testimony does not relate to the re- recording of any guitarist's
11		contributions.
12	Martinez Decl. at ¶ 6; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
13	40. In addition to its original creative	Disputes. The cited deposition
14	contributions to the production,	testimony of Martinez, and the
15	recording and overall creation of the	interrogatory response referred to
16	Los Originales Albums, Hyphy also	therein, does not support statement #40
	designed and created the artwork featured on the cover of each Album	inasmuch as such testimony states the Album Artwork was designed and
17	(the "Album Artwork").	created by Marcelino Mendoza, an
18		independent contractor.
19	Martinez Decl. at ¶ 7; Begakis Decl. at	
20	¶ 8, Exhibit "G" thereto, Martinez Depo	Further disputes to the extent statement
	at 127:12-21.	#40 claims that Hyphy provided "original creative contributions to the
21		production, recording and overall
22		creation of the Los Originales Albums."
23		Chavez was the sole producer, sole author and sole creator of the sound
24		recordings of the Albums and therefore
25		possessed all original rights, title and
26		interest in the sound recordings of the
		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
27		Depo. at 60:5-61:2 (disclaiming Hyphy's
28		

$_{1}\parallel$	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\  \ $	and Supporting Evidence:	Supporting Evidence:
,		involvement in the recording of - "Naci
		Con Suerte de Rey Con Mariachi").
.		Neither Hymby non anyone officed with
		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
		input into the recording of the Albums,
		provided any original material for the sound recordings of the Albums or
		exercised any artistic, production or
		recording control over the Albums.
		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
		Chavaz navanhad an acmamant an
		Chavez never had an agreement or understanding with Hyphy, or anyone
		else, that it would be deemed a co-author
		of the Albums. Chavez Decl., Dkt. 46-2
		at ¶¶ 8-13, 19.
	41. Yellowcake is a competing record	Disputes. Yellowcake is primarily
	label and distributor of sound	engaged in the business of, among other
	recordings, utilizing Colonize as its "distribution arm" to release and	things, purchasing, owning, licensing and exploiting intellectual property
	exploit rights that Yellowcake	rights. Declaration of Kevin Berger (the
	acquires.	"Berger Decl."), Dkt. 82-14 at ¶ 3.
	1	Colonize is a digital music distributor
	Begakis Decl. at ¶ 9, Exhibit "H"	that enters into contracts with numerous
	thereto, Deposition Transcript of Kevin	different record labels and performers.
	Berger (" <b>Berger Depo</b> ") at 91:19-23;	Declaration of Jose David Hernandez  (the "Hernandez Deel ") Dkt 82 16 at
	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Deposition Transcript of Jose	(the "Hernandez Decl."), Dkt. 82-16 at ¶¶ 3-6. Yellowcake and Colonize are
	David Hernandez, Volume I	two completely separate entities with
$\ $	("Hernandez Depo I") at 77:19-21.	two different owners.
	42. Hernandez is a co-owner of both	Undisputed that Hernandez is an owner
	Yellowcake and Colonize.	of Colonize and that he once was an
	D1-:- D1 -4 ¶ 10 F 1 '1 '4 '47'	owner of Yellowcake.
	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 51:9-11,	
	116:18-117:14.	
1111		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
	43. In his position as co-owner of both	Disputes. The cited deposition
3	Yellowcake and Colonize,	testimony of Hernandez does not support
4	Hernandez has admitted that both entities have operated – and	statement #43 inasmuch as Hernandez testified that Colonize "gets some stuff
5	continue to operate – as one single	of value" for distributing Yellowcake's
6	economic entity, with common ownership, common business	music. Hernandez Depo I at 80:13.
7	operations, common office space,	
8	common staff, and many other	
9	common resources.	
10	Begakis Decl. at ¶ 10, Exhibit "I"	
11	thereto, Hernandez Depo I at 80:3-20.	
12	44. In or about March 2019, Hernandez approached Chavez about selling	Disputes. The cited deposition testimony of Chavez does not support
13	the Los Originales Albums to	statement #44 inasmuch as Chavez
	Yellowcake.	testified he does not remember when
14	Begakis Decl. at ¶ 14, Exhibit "M"	Hernandez approached him, but it was in the year 2020 (Chavez Depo I at 78:9-
15	thereto, Chavez Depo II at 77:13-17,	25). The cited deposition testimony of
16	79:7-9, 79:17-80:2, 81:7-16; Begakis	Hernandez does not support statement
17	Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 148:24-149:5.	#44 inasmuch as Hernandez does not testify that he approached Chavez, and
18	11cmandez Depo 1 at 146.24-149.3.	he testifies "it could have been 2018"
19		when he first discussed with Chavez
20		purchasing the Albums (Hernandez
		Depo I at 148:24-149:5).
21		On or about March 21, 2019, Chavez
22		sold the entirety of his rights, title and
23		interest in the copyrights of the sound recordings of the Albums to Yellowcake.
24		Chavez Decl., Dkt. 46-2 at ¶¶ 15; Asset
25	AC II 1 1 1 1 1 1 1	Purchase Agreement, Dkt. 83-3.
26	45. Hernandez had previously worked with Hyphy and had secretly gained	Disputes. Hernandez never worked for Hyphy, and statement # 45 is
27	valuable information on Hyphy's	unsubstantiated and self-serving.
	business and relationship with	
28		

	Hyphy's Undisputed Material Facts	Onnosing Party's Despense and
1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Chavez. Hernandez therefor knew	The cited paragraph in the Martinez
,	that Hyphy only had an oral	Decl. stating that Hernandez "used to
4	agreement with the Group.	work with Hyphy" and therefore "obtained valuable information
5	Martinez Decl. at ¶ 3; Begakis Decl. at	including the knowledge Hyphy's
6	¶ 8, Exhibit "G" thereto, Martinez Depo	Agreement with the Group was oral" is
7	at 26:2-12.	misleading because Martinez testified
/		Hernandez was merely an initial third-
8		party distributer of Hyphy music
9		(Martinez Depo. at 26:6-12), and such
10		statement is pure speculation as Martinez
10		also testified that Hyphy's business dealings with Hernandez began and
11		ended in 2010, approximately three years
12		prior to the existence of the alleged oral
13		agreement (Martinez Depo. at 15:10-15,
		26:20-23).
14	46. Hernandez approached and	Disputes. The cited testimony of Chavez
15	convinced Chavez, without Hyphy	does not refer to any knowledge his
16	or the rest of the Group's knowledge, to assign the Albums to	backing musicians may or may not have had regarding the alleged conversation.
	Yellowcake in exchange for	Moreover, Chavez testified that the
17	payment of \$500,000.	alleged transaction was a purchase, not
18		an assignment. The cited testimony of
19	Begakis Decl. at ¶ 14, Exhibit "M"	Hernandez is unrelated to statement #46.
20	thereto, Chavez Depo II at 77:13-17,	
20	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	Further disputes to the extent statement #
21	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 107:4-20.	46 implies that anyone other than Chavez possessed the right to convey
22	thereto, fremandez Bepo 1 at 107.4-20.	any right in the Albums. Defendant
23		consistently confirmed in both versions
		of its Counterclaims that the alleged oral
24		agreement was between only Hyphy and
25		Chavez. Defendant's Counterclaim, Dkt.
26		17 at ¶¶ 15-17; Defendant's First Amended Counterclaim, Dkt. 15 at ¶¶
27		15-17.
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:  Moreover, Martinez, the person who
3		Moreover, Martinez, the person who made the alleged oral agreement on
4		behalf of Defendant, further confirmed,
5		repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl.,
6 7		that the alleged oral agreement was between only Hyphy and Chavez.
8		August 2021 Martinez Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
9		Defendant confirmed in other of its
10		filings with the Court that the alleged
11		oral agreement was between only Hyphy and Chavez. Hyphy's Opposition to
12		Yellowcake's Motion to Dismiss
13		Hyphy's Counterclaims. Hyphy Opp. To MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.
14		5; August 2021 Hyphy Reply, Dkt. 45 at
15		pg. 1 lns. 16-18.
16		Florez and Vargas did not possess any
17		alienable right, title or interest in the Albums. Chavez was the sole producer,
18		sole author and sole creator of the sound
19		recordings of the Albums and therefore possessed all original rights, title and
20		interest in the sound recordings of the
21		Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
22		10; Martinez Depo. at 60:5-61:2
23		(disclaiming Hyphy's involvement in the
24		recording of - "Naci Con Suerte de Rey Con Mariachi").
25		Naith an Hambar and a contract to the
26		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
27		input into the recording of the Albums,
28		provided any original material for the

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	sound recordings of the Albums or
	exercised any artistic, production or recording control over the Albums.
	Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-autho
	of the Albums. Chavez Decl., Dkt. 46-2
47. Chavez and Yellowcake codified	at ¶¶ 8-13, 19. Undisputed Chavez and Yellowcake
their purported agreement via an	entered into the Asset Purchase
"Asset Purchase and Assignment	Agreement set forth at Dkt. 83-3.
Agreement" executed on or about March 21, 2019 (the " <i>Asset</i> "	
Purchase Agreement').	
Begakis Decl. at ¶ 7, Exhibit "F" thereto, Plaintiff/Counterdefendant's	
Document Production (PLF000021-	
PLF000039).	
48. Chavez may have been the lead singer, but the instrumentation of	Disputed. This is a self-serving opinion and characterization. Chavez was the
the recordings is a major factor in	sole producer, sole author and sole
their appeal, as Hyphy has	creator of the sound recordings of the
confirmed.	Albums and therefore possessed all
Martinez Decl. at ¶ 3; Begakis Decl. at	original rights, title and interest in the sound recordings of the Albums. Chave
¶ 8, Exhibit "G" thereto, Martinez	Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales
Depo. at 111:24-112:3.	Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
	Depo. at 60:5-61:2 (disclaiming Hyphy'
	involvement in the recording of - "Naci Con Suerte de Rey Con Mariachi").
	,
	Neither Hyphy nor anyone affiliated wit
	Hyphy provided any original creative

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		provided any original material for the sound recordings of the Albums or
4		exercised any artistic, production or
5		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
6		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
7		Chavez never had an agreement or
8		understanding with Hyphy, or anyone
9		else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
10		at ¶¶ 8-13, 19.

## C. <u>Yellowcake's First Claim For Copyright Infringement Fails</u> <u>Because Yellowcake Has No Provable Damages</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	<b>Supporting Evidence:</b>
49.Defendant/Counterclaimant HYPHY MUSIC, INC. (" <i>Hyphy</i> ") is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings, coupled with artwork.	Undisputed.
Declaration of John Begakis ("Begakis	
<b>Decl.</b> ") at ¶ 8, Exhibit "G" thereto, Jose Martinez Deposition Transcript	
(" <i>Martinez Depo</i> ") at 13:6-14:6.	
50.Counter-Defendant JESUS	Undisputed that Chavez is the lead
CHAVEZ, SR (" <i>Chavez</i> ") is the lead	singer when he performs with his
singer of the Spanish-language	backing band, Los Originales De San
musical group Los Originales De	Juan, and he recorded the six albums that
San Juan (the " <i>Group</i> ").	is the subject of this action, titled: (i) Los

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	-	Originales de San Juan- "El
	Begakis Decl. at ¶ 13, Exhibit "L"	Campesino"; (ii) Los Originales de San
4	thereto, Jesus Chavez, Sr. Deposition,	Juan-"Corridos de Poca M"; (iii) Los
5	Volume I (" <i>Chavez Depo I</i> ") at 25:13-14; Begakis Decl. at ¶ 14, Exhibit "M"	Originales de San Juan-"En Vivo Desde La Cantina de Mi Barrio"; (iv) Los
6	thereto, Jesus Chavez, Sr. Deposition,	Originales de San Juan-"Nuestra
7	Volume II (" <i>Chavez Depo II</i> ") at	Historia En Vivo''; (v) Los Originales de
	16:22-17:5.	San Juan- "Amigos y Contrarios"; and
8		(vi) Los Originales de San Juan-"Naci
9		Con Suerte de Rey Con Mariachi" (collectively "Albums").
10		(concourery mounts ).
11		Disputes to the extent it implies lead
		singer was Chavez's only role in Los
12		Originales De San Juan. Chavez is Los
13		Originales De San Juan's sole founder, and principal. Chavez Decl., Dkt. 46-2
14		at ¶ 3; Defendants' Counterclaim, Dkt. 7
15		at ¶ 15 (referring to Chavez as "the
		founder and principal"); Defendants'
16		First Amended Counterclaim, Dkt. 15 at
17		¶ 15 (same).
18		Chavez was the sole producer, sole
19		author and sole creator of the sound
		recordings of the Albums and therefore
20		possessed all original rights, title and interest in the sound recordings of the
21		Albums. Declaration of Jesus Chavez,
22		Sr. (the "Chavez Decl."), Dkt. 46-2 at ¶¶
23		8-21; Declaration of Hector Rosales (the
24		"Rosales Decl."), Dkt. 46-1 at ¶¶ 7-10;
		Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
25		recording of - "Naci Con Suerte de Rey
26		Con Mariachi").
27	51. The Group operates as a co-equal	Undisputed Flores formerly played the
28	partnership comprised of Chavez and	accordion, and that Vargas formerly

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	fellow band members Domingo	played the drums at times for Chavez
4	Torres Flores (" <i>Flores</i> "), who plays the accordion, and Alfonso Vargas	when Chavez performed with his backing band, Los Originales De San
5	("Vargas"), who plays the drums.	Juan.
6	Begakis Decl. at ¶ 13, Exhibit "L" thereto, Chavez Depo I at 18:16-19:3,	Disputes that either Flores or Vargas were co-equal partners in Los Originales
7	20:8-16, 21:16-19; Begakis Decl. at ¶	De San Juan. Chavez was the sole
8	11, Exhibit "J" thereto, Deposition	producer, sole author and sole creator of
9	Transcript of Alfonso Vargas (" <i>Vargas Depo</i> ") at 17:16-19; 27:17-22; 143:14-	the sound recordings of the Albums and therefore possessed all original rights,
10	16; Begakis Decl. at ¶ 12, Exhibit "K"	title and interest in the sound recordings
11	thereto, Deposition Transcript of	of the Albums. Chavez Decl., Dkt. 46-2
12	Domingo Torres Flores (" <i>Flores Depo</i> ") at 47:15-25, 48:19-23.	at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
13	Dept ) at 17:13 23, 10:13 23.	(disclaiming Hyphy's involvement in the
14		recording of -"Naci Con Suerte de Rey
	52.In or about February 2013, Hyphy	Con Mariachi").  Disputes the Albums were created
15	and the Group began working	pursuant to the alleged Agreement. In or
16	together to co-create various sound	about 2013, Chavez, and Chavez alone,
17	recordings to be embodied on multiple albums, which they orally	entered into an oral distribution agreement, not an oral recording
18	agreed were to be owned by Hyphy	agreement, with Hyphy. Chavez Decl.,
19	(the "Agreement").	Dkt. 46-2 at ¶ 7.
20	Declaration of Jose Martinez	The cited deposition testimony of
21	("Martinez Decl.") at $\P$ 3; Decl. at $\P$ 13,	Chavez does not support statement #52
22	Exhibit "L" thereto, Chavez Depo I at 34:7-11; Decl. at ¶ 14, Exhibit "M"	inasmuch as Chavez's testimony that an Album was recorded "with Hyphy"
23	thereto, Chavez Depo II at 19:14-17,	refers to such Album as being part of the
24	32:16-20, 35:12-21.	distribution agreement between Chavez
		and Hyphy.
25		Defendant consistently confirmed in
26		both versions of its Counterclaims that
27		the alleged oral agreement was between only Hyphy and Chavez. Defendant's
28		only rijping with cliared. Deteriority

,	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1		
2	and Supporting Evidence:	Supporting Evidence: Counterclaim, Dkt. 7 at ¶¶ 15-17;
3		Defendant's First Amended
4		Counterclaim, Dkt. 15 at ¶¶ 15-17.
5		Managyan Mantings the managen who
6		Moreover, Martinez, the person who made the alleged oral agreement on
7		behalf of Defendant, further confirmed,
8		repeatedly, under penalty of perjury, in
		his Declaration in support of Reply to Counter-Defendants' Challenge to the
9		Validity of Certain Copyright
10		Registrations (the "August 2021
11		Martinez Reply Decl."), that the alleged
12		oral agreement was between only Hyphy
12		and Chavez. August 2021 Martinez Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
13		Reply Deel., Dkt. 45-1 at       2, 4, 7, 6.
14		Defendant confirmed in other of its
15		filings with the Court that the alleged
		oral agreement was between only Hyphy
16		and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss
17		Hyphy's Counterclaims (the "Hyphy
18		Opp. To MTD"), Dkt. 27 at pg. 1 ln. 27 –
19		pg. 2 ln. 5; Hyphy's Reply to
20		Counterdefendants' Challenge to the
		Validity of Certain Copyright Registrations (the "August 2021 Hyphy
21		Reply"), Dkt. 45 at pg. 1 lns. 16-18.
22		
23		Florez and Vargas did not possess any
24		alienable right, title or interest in the Albums. Chavez was the sole producer,
25		sole author and sole creator of the sound
		recordings of the Albums and therefore
26		possessed all original rights, title and
27		interest in the sound recordings of the
28	[	Albums. Chavez Decl., Dkt. 46-2 at ¶¶

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	<b>Supporting Evidence:</b>
	8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
	10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey
	Con Mariachi").
	Naithar Hyphy nor anyona offiliated with
	Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
	input into the recording of the Albums,
	provided any original material for the
	sound recordings of the Albums or exercised any artistic, production or
	recording control over the Albums.
	Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
	at ¶¶ 8-13, 19.
53. The albums created pursuant to the	Disputes. Six, not five, albums are the
`	subject of Yellowcake's claims, <i>i.e.</i> , the six "Albums" identified in Yellowcake's
• • • • • • • • • • • • • • • • • • • •	response #2 above. Further disputes the
Campesino"; (4) "Desde La Cantina	Albums were created pursuant to the
	alleged Agreement. In or about 2013, Chavez, and Chavez alone, entered into
` /	an oral distribution agreement, not an
Albums" or "Albums").	oral recording agreement, with Hyphy.
Martinez Deal at ¶ 1. Pagalzia Deal at	Chavez Decl., Dkt. 46-2 at ¶ 7.
" ' •	Defendant consistently confirmed in
at 44:7-23, 51:22-25.	both versions of its Counterclaims that
	the alleged oral agreement was between
	only Hyphy and Chavez. Defendant's Counterclaim, Dkt. 7 at ¶¶ 15-17;
	Defendant's First Amended
	53. The albums created pursuant to the Agreement were entitled (1) "Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El Campesino"; (4) "Desde La Cantina de Mi Barrio (En Vivo)"; and (5) "Nuestra Historia (En Vivo)" (collectively, the "Los Originales Albums" or "Albums").  Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
	and Supporting Evidences	Counterclaim, Dkt. 15 at ¶¶ 15-17.
3		
4		Moreover, Martinez, the person who made the alleged oral agreement on
5		behalf of Defendant, further confirmed,
6		repeatedly, under penalty of perjury, in
7		the August 2021 Martinez Reply Decl., that the alleged oral agreement was
8		between only Hyphy and Chavez.
9		August 2021 Martinez Reply Decl., Dkt.
10		45-1 at ¶¶ 2, 4, 7, 8.
11		Defendant confirmed in other of its
12		filings with the Court that the alleged oral agreement was between only Hyphy
13		and Chavez. Hyphy's Opposition to
		Yellowcake's Motion to Dismiss
14		Hyphy's Counterclaims. Hyphy Opp. To MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.
15		5; August 2021 Hyphy Reply, Dkt. 45 at
16		pg. 1 lns. 16-18.
17		Florez and Vargas did not possess any
18		alienable right, title or interest in the
19		Albums. Chavez was the sole producer, sole author and sole creator of the sound
20		recordings of the Albums and therefore
21		possessed all original rights, title and
22		interest in the sound recordings of the Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
23		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
24		Depo. at 60:5-61:2 (disclaiming Hyphy's
		involvement in the recording of - "Naci Con Suerte de Rey Con Mariachi").
25		
26		Neither Hyphy nor anyone affiliated with
27		Hyphy provided any original creative input into the recording of the Albums,
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		provided any original material for the
4		sound recordings of the Albums or exercised any artistic, production or
5		recording control over the Albums.
6		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
		Rosales Decl., Dkt. 40-1 at       /-10.
7		Chavez never had an agreement or
8		understanding with Hyphy, or anyone else, that it would be deemed a co-author
9		of the Albums. Chavez Decl., Dkt. 46-2
10	54 0	at ¶¶ 8-13, 19.
11	54.One of the other two albums identified in Yellowcake's	Undisputed.
12	Complaint, entitled "Chuy Chavez y	
13	Sus Amigos," has no connection to this dispute and wasn't even	
14	recorded by Chavez.	
15	Martinaz Daal at ¶ A. Dagakia Daal at	
16	Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
17	at 44:24:-9, 154:11-155:25.	D' 1 11
18	55. Though this Agreement was not initially memorialized in writing,	Disputes the Albums were created pursuant to the alleged Agreement. In or
19	Flores and Vargas understood that	about 2013, Chavez, and Chavez alone,
20	such Agreement existed.	entered into an oral distribution
21	Martinez Decl. at ¶ 5. Declaration of	agreement, not an oral recording agreement, with Hyphy. Chavez Decl.,
	Domingo Torres Flores ("Flores	Dkt. 46-2 at ¶ 7.
22	<b>Decl.</b> ") at ¶ 3; Declaration of Alfonso Vargas (" <b>Vargas Decl.</b> ") at ¶ 3.	Defendant consistently confirmed in
23	raigus (ruigus Deci. jai    3.	both versions of its Counterclaims that
24		the alleged oral agreement was between
25		only Hyphy and Chavez. Defendant's Counterclaim, Dkt. 7 at ¶¶ 15-17;
26		Defendant's First Amended
27		Counterclaim, Dkt. 15 at ¶¶ 15-17.
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
$\begin{bmatrix} 2 \\ 3 \end{bmatrix}$	ma supporting Evidence	Moreover, Martinez, the person who
		made the alleged oral agreement on
4		behalf of Defendant, further confirmed, repeatedly, under penalty of perjury, in
5		the August 2021 Martinez Reply Decl.,
6		that the alleged oral agreement was between only Hyphy and Chavez.
7		August 2021 Martinez Reply Decl., Dkt.
8		45-1 at ¶¶ 2, 4, 7, 8.
9		Defendant confirmed in other of its
10		filings with the Court that the alleged oral agreement was between only Hyphy
11		and Chavez. Hyphy's Opposition to
12		Yellowcake's Motion to Dismiss Hyphy's Counterclaims. Hyphy Opp. To
13		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.
14		5; August 2021 Hyphy Reply, Dkt. 45 at pg. 1 lns. 16-18.
15		PS. 1 ms. 10 10.
16		Florez and Vargas did not possess any alienable right, title or interest in the
17		Albums. Chavez was the sole producer,
18		sole author and sole creator of the sound recordings of the Albums and therefore
19		possessed all original rights, title and
20		interest in the sound recordings of the Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
21		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
22		Depo. at 60:5-61:2 (disclaiming Hyphy's
23		involvement in the recording of - "Naci Con Suerte de Rey Con Mariachi").
24		, ,
25		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
26		input into the recording of the Albums,
27		provided any original material for the sound recordings of the Albums or
28		sound recordings of the Mounts of

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3 4 5		exercised any artistic, production or recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
6 7		Chavez never had an agreement or understanding with Hyphy, or anyone
8		else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
9	56 Flores and Verges as as aqual	at ¶¶ 8-13, 19.
10	56. Flores and Vargas, as co-equal members of the Group, also intended	Disputes that either Flores or Vargas were co-equal partners in Los Originales
1	that all rights in and to their recording services rendered pursuant	De San Juan.
12	to the Agreement be conveyed	Disputes the Albums were created
3	Hyphy.	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone,
4	Martinez Decl. at ¶ 4. Flores Decl. at ¶¶	entered into an oral distribution
15	3-5; Vargas Decl. at ¶¶ 3-5.	agreement, not an oral recording agreement, with Hyphy. Chavez Decl.,
6		Dkt. 46-2 at ¶ 7.
7		The Vargas Decl. and the Flores Decl.
8		cited by Hyphy does not support statement # 56 inasmuch as neither
20		declarant states he is a "co-equal"
21		member of Los Originales de San Juan, or state anything else therein that has a
		similar meaning to the quoted language.
22		They merely state they provided backing musician services by playing their
23		instrument in the creation of the Albums;
24		they do not state that they personally
25		provided any original or creative material that was incorporated into the
6		sound recordings of the Albums, or
27		provide any description of same. See
8		generally Florez Decl.; Vargas Decl.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Chavez is Los Originales De San Juan's
4		sole founder, and principal. Chavez Decl., Dkt. 46-2 at ¶ 3; Defendants'
5		Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the founder and principal");
7		Defendants' First Amended
8		Counterclaim, Dkt. 15 at ¶ 15 (same).
9		Florez and Vargas did not possess any
10		alienable right, title or interest in the Albums. Chavez was the sole producer,
11		sole author and sole creator of the sound recordings of the Albums and therefore
12		possessed all original rights, title and
13		interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
14		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
15		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
16		recording of - "Naci Con Suerte de Rey Con Mariachi").
17	57.Flores and Vargas also later	Disputes Florez and Vargas possessed
18	confirmed their belief and intent to convey all rights to Hyphy by	any alienable right, title or interest in the Albums. Chavez was the sole producer,
19	executing enforceable Copyright	sole author and sole creator of the sound
20   21	Assignment Agreements on or about March 22, 2022 (collectively, the	recordings of the Albums and therefore possessed all original rights, title and
22	"Assignments").	interest in the sound recordings of the
23	Martinez Decl. at ¶ 5, Exhibit "A"	Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
24	thereto.	10; Martinez Depo. at 60:5-61:2
25		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
26		Con Mariachi").
27		Prior to 2019 Chavez had never agreed
28		to alienate any of his ownership interest

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	in the Albums to anyone. Chavez Decl.,
	Dkt. 46-2 at ¶¶ 14. On or about March 21, 2019, Chavez sold the entirety of his
	rights, title and interest in the copyrights
	of the sound recordings of the Albums to
	Yellowcake. Chavez Decl., Dkt. 46-2 at ¶¶ 15; Asset Purchase Agreement, Dkt.
	83-3.
58. Unlike larger record labels, however,	Disputes. Chavez was the sole producer,
Hyphy closely collaborated with the Group to create the Albums.	sole author and sole creator of the sound recordings of the Albums and therefore
The state of the s	possessed all original rights, title and
Martinez Decl. at ¶ 6; Begakis Decl. at	interest in the sound recordings of the
¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-76:25, 83:11-84:22, 84:24-85:8,	Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
85:14-86:16.	Depo. at 60:5-61:2 (disclaiming Hyphy's
	involvement in the recording of - "Naci
	Con Suerte de Rey Con Mariachi'').
	Neither Hyphy nor anyone affiliated with
	Hyphy provided any original creative
	input into the recording of the Albums, provided any original material for the
	sound recordings of the Albums or
	exercised any artistic, production or
	recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or understanding with Hyphy, or anyone
	else, that it would be deemed a co-author
	of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
59. For the first three (of five) of the	Disputes. Chavez was the sole producer,
Los Originales Albums, Hyphy	sole author and sole creator of the sound
helped determine the "theme" and	recordings of the Albums and therefore
overall creative direction of each	possessed all original rights, title and

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Album.	interest in the sound recordings of the
4	Martinez Decl. at ¶ 6.	Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
5	"	10; Martinez Depo. at 60:5-61:2
6		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
7		Con Mariachi").
8		Neither Hyphy nor anyone affiliated with
9		Hyphy provided any original creative
10		input into the recording of the Albums, provided any original material for the
11		sound recordings of the Albums or
12		exercised any artistic, production or recording control over the Albums.
13		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
14		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
15		Chavez never had an agreement or
16		understanding with Hyphy, or anyone else, that it would be deemed a co-author
17		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
18	60. For the first three (of five) of the	Disputes. The deposition transcript
19	Los Originales Albums, Hyphy selected the songs to be included in	testimony cited by Hyphy does not support statement # 60 inasmuch as such
20	each Album.	testimony relates only to the album
21	Martinez Decl. at ¶ 6; Begakis Decl. at	titled, "Corridos de Poca M."
22	¶ 8, Exhibit "G" thereto, Martinez Depo	Moreover, Chavez was the sole
23	at 83:11-84:22.	producer, sole author and sole creator of the sound recordings of the Albums and
24		therefore possessed all original rights,
25		title and interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2
26		at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
27		7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
28		(discianting fryphy 8 involvement in the

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		recording of - "Naci Con Suerte de Rey Con Mariachi").
4		,
5		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
6		input into the recording of the Albums, provided any original material for the
7		sound recordings of the Albums or
;   ;		exercised any artistic, production or recording control over the Albums.
		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
		Chavez never had an agreement or
		understanding with Hyphy, or anyone else, that it would be deemed a co-author
		of the Albums. Chavez Decl., Dkt. 46-2
.	(1	at ¶¶ 8-13, 19.
	61. For the first three (of five) of the Los Originales Albums, Hyphy	Disputes. In or about 2013, Chavez, and Chavez alone, entered into an oral
	selected the recording studio, and	distribution agreement, not an oral
	paid for all costs associated with the recording of each Album.	recording agreement, with Hyphy (Chavez Decl., Dkt. 46-2 at ¶ 7) whereby
	_	Hyphy paid for recording costs as part of
	Martinez Decl. at ¶ 6.	such agreement.
		Moreover, Chavez was the sole
		producer, sole author and sole creator of the sound recordings of the Albums and
		therefore possessed all original rights,
		title and interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2
.		at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
		7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
		recording of - "Naci Con Suerte de Rey
		Con Mariachi").

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	Neither Hyphy nor anyone affiliated with
	Hyphy provided any original creative input into the recording of the Albums,
	provided any original material for the
	sound recordings of the Albums or
	exercised any artistic, production or recording control over the Albums.
	Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-author
	of the Albums. Chavez Decl., Dkt. 46-2
62. For the first three (of five) of the	at ¶¶ 8-13, 19.  Disputes. The deposition transcript
Los Originales Albums, Hyphy	testimony cited by Hyphy does not
hired the sound engineer.	support statement # 62 inasmuch as it
	does not refer to who hired Hector
Martinez Decl. at ¶ 6; Begakis Decl. at	Rosales, who was the audio engineer for
¶ 8, Exhibit "G" thereto, Martinez Depo at 59:21-60:7, 61:10-16.	the recording of "Amigos y Contrarios," "Corridos de Poca M," and "El
at 39.21-00.7, 01.10-10.	Campesino."
	Campesine.
	Hector Rosales was engaged by Chavez
	to act as audio engineer for the Albums.
62 For the first three (of five) of the	Rosales Decl., Dkt. 46-1 at ¶ 5.
63. For the first three (of five) of the Los Originales Albums, Hyphy	Disputes. In or about 2013, Chavez, and Chavez alone, entered into an oral
paid the Group a substantial	distribution agreement, not an oral
amount for recording the Albums.	recording agreement, with Hyphy, who
S	paid Chavez in accordance with the
Martinez Decl. at ¶ 6.	terms of their oral distribution agreement
	(Chavez Decl., Dkt. 46-2 at ¶ 7).
64. And for the first three (of five) of	Disputes. The cited deposition
the Los Originales Albums, Hyphy	testimony of Martinez does not support
oversaw and generally supervised	statement #64 inasmuch as he testified
the recording and production of	Hyphy was merely "engaged" in

$_{1}\parallel$	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	each Album.	production. Martinez Depo. at 86:7, 86:15.
4	Martinez Decl. at ¶ 6; Begakis Decl. at	
5	¶ 8, Exhibit "G" thereto, Martinez Depo	Moreover, Chavez was the sole
6	at 85:14-86:16.	producer, sole author and sole creator of the sound recordings of the Albums and
7		therefore possessed all original rights, title and interest in the sound recordings
8		of the Albums. Chavez Decl., Dkt. 46-2
9		at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
10		(disclaiming Hyphy's involvement in the
11		recording of - "Naci Con Suerte de Rey Con Mariachi").
12		Con Martiem ).
13		Neither Hyphy nor anyone affiliated with
		Hyphy provided any original creative
14		input into the recording of the Albums, provided any original material for the
15		sound recordings of the Albums or
16		exercised any artistic, production or
17		recording control over the Albums.
18		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
19		Chavez never had an agreement or
20		understanding with Hyphy, or anyone
21		else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
22		at ¶¶ 8-13, 19.
23	65. For the final two (of five) Albums	Disputes. The cited deposition
24	(which are comprised of recordings	testimony of Martinez does not support statement #65 inasmuch as such
	from a previous live performance by the Group), Hyphy also selected	testimony does not relate to the selection
25	and paid for the venue of the live	and payment for any venue.
26	performance.	
27	M. C. D. L. M.C. D. L. D. L.	Moreover, Chavez was the sole
28	Martinez Decl. at ¶ 6; Begakis Decl. at	producer, sole author and sole creator of

Hyphy's Undisputed Material Facts	Onnosing Douty's Dosnovas and
	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
¶ 8, Exhibit "G" thereto, Martinez Depo	the sound recordings of the Albums and
at 75:6-25.	therefore possessed all original rights, title and interest in the sound recordings
	of the Albums. Chavez Decl., Dkt. 46-2
	at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
	(disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey
	Con Mariachi").
	Neither Hyphy nor anyone affiliated with
	Hyphy provided any original creative
	input into the recording of the Albums, provided any original material for the
	sound recordings of the Albums or
	exercised any artistic, production or
	recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone else, that it would be deemed a co-author
	of the Albums. Chavez Decl., Dkt. 46-2
	at ¶¶ 8-13, 19.
66. For the final two (of five) Albums	Disputes. The cited deposition
(which are comprised of recordings from a previous live performance	testimony of Martinez does not support statement #66 inasmuch as such
by the Group), Hyphy also selected	testimony does not relate to the selection
the songs to be performed at the	of songs at a live performance.
live performance and recorded for the Albums.	Moreover, Chavez was the sole
	producer, sole author and sole creator of
Martinez Decl. at ¶ 6; Begakis Decl. at	the sound recordings of the Albums and
¶ 8, Exhibit "G" thereto, Martinez Depo	therefore possessed all original rights,
at 75:6-25.	title and interest in the sound recordings of the Albums. Dkt. 46-2 at ¶¶ 8-21;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10;

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	Martinez Depo. at 60:5-61:2
	(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
	Con Mariachi").
	,
	Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
	input into the recording of the Albums,
	provided any original material for the sound recordings of the Albums or
	exercised any artistic, production or
	recording control over the Albums.
	Chavez Decl., Dkt. Dkt. 46-2 at ¶¶ 8-13,
	19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-author
	of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
67. For the final two (of five) Albums	Disputes. Chavez was the sole producer,
(which are comprised of recordings	sole author and sole creator of the sound
from a previous live performance by the Group), Hyphy also directly	recordings of the Albums and therefore possessed all original rights, title and
employed, supervised, and directed	interest in the sound recordings of the
the services of the sound engineer	Albums. Chavez Decl., Dkt. 46-2 at ¶¶
and videographer who each recorded the audio and video of the live	8-21; Martinez Depo. at 60:5-61:2
performance, respectively.	(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
	Con Mariachi").
Martinez Decl. at ¶ 6; Begakis Decl. at	Noith on Hymby man anyone affiliated
¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
20.	input into the recording of the Albums,
	provided any original material for the
	sound recordings of the Albums or
	exercised any artistic, production or recording control over the Albums.
	1

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
4		Chavez never had an agreement or
5 6		understanding with Hyphy, or anyone else, that it would be deemed a co-author
7		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
8 9		Disputes. Statement #41 constitutes a
10		self-serving and unsubstantiated statement, which is also inadmissible
11		because there is no evidence of Hyphy's personal knowledge of the activities of
12		any sound engineer or videographer who
13	68. For the final two (of five) Albums	recorded any live performances.  Disputes. Statement #68 constitutes a
14	(which are comprised of recordings	self-serving and unsubstantiated
15	from a previous live performance by	statement. The cited deposition
16	the Group), Hyphy also wrote a	testimony of Martinez does not support
	script for the history of the band as presented at the live performance,	statement #68 inasmuch as such testimony does not relate to the writing
17 18	and hired a "MC"/commentator who narrated the script.	or narration of any script.
19	narrated the sempt.	
	Martinez Decl. at ¶ 6; Begakis Decl. at	
20	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
21	69. For the final two (of five) Albums	Disputes. Statement #69 constitutes a
22	(which are comprised of recordings	self-serving and unsubstantiated
23	from a previous live performance by	statement, which is also irrelevant to
24	the Group), Hyphy also re-recorded	Hyphy's claims of ownership of the
	whole portions of the guitarist's contributions to the live performance	recordings. The cited deposition testimony of Martinez does not support
25	afterwards, using a new guitarist	statement #69 inasmuch as such
26	selected, hired and paid for by	testimony does not relate to the re-
27	Hyphy.	recording of any guitarist's contributions.
28		CONTITUUTIONS.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Martinez Decl. at ¶ 6; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo	
4	at 75:6-25.	
5	70.It should be noted here that Flores and Vargas were plainly joint	Disputes that either Flores or Vargas were joint authors in the Albums, that
6	authors of the Albums, including	they were equally involved in all of Los
7	based on the fact that Flores and	Originales De San Juan's activities or
8	Vargas were equally involved in all	that same existed as an unincorporated
	activities of the Band, which existed as an unincorporated partnership in	partnership in which all members were joint owners, participants and
9	which all Band members were joint	contributors, and any of their related
10	owners, participants and	testimony is self-serving and conclusory.
11	contributors.	
		Disputes the Albums were created
12	Begakis Decl. at ¶ 13, Exhibit "L"	pursuant to the alleged Agreement. In or
13	thereto, Chavez Depo I at 18:23-19:3; Begakis Decl. at ¶ 11, Exhibit "J"	about 2013, Chavez, and Chavez alone, entered into an oral distribution
14	thereto, Vargas Depo at 27:17-22,	agreement, not an oral recording
15	143:7-10, 143:14-16, 143:17-20,	agreement, with Hyphy. Chavez Decl.,
	143:25-144:3, 144:4-7; Begakis Decl. at	Dkt. 46-2 at ¶ 7.
16	¶ 12, Exhibit "K" thereto, Flores Depo	
17	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	The testimony cited by Hyphy does not support statement # 70 inasmuch as
18		neither Flores nor Vargas testifies they
19		were involved in all activities of Los Originales de San Juan, or that they
20		personally provided any original or
21		creative material that was incorporated
22		into the sound recordings of the Albums, or provide any description of same.
23		
24		Chavez is Los Originales De San Juan's
		sole founder, and principal. Chavez Decl., Dkt. 46-2 at ¶ 3; Defendants'
25		Counterclaim, Dkt. 7 at ¶ 15 (referring to
26		Chavez as "the founder and principal");
27		Defendants' First Amended
		Counterclaim, Dkt. 15 at ¶ 15 (same).
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Florez and Vargas did not possess any
4		alienable right, title or interest in the
5		Albums. Chavez was the sole producer, sole author and sole creator of the sound
6		recordings of the Albums and therefore
7		possessed all original rights, title and interest in the sound recordings of the
8		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
9		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
10		(disclaiming Hyphy's involvement in the
11		recording of - "Naci Con Suerte de Rey Con Mariachi").
12	71.It should be noted here that Flores	Disputes that either Flores or Vargas
13	and Vargas were plainly joint authors of the Albums, including	were joint authors in the Albums or contributed to their creation, or that they
14	based on the fact that Flores and	were equally credited on the Albums and
15	Vargas were equally credited on all Albums in which each of them made	any of their related testimony is self- serving and conclusory.
16	contributions.	
17	See Begakis Decl. at ¶ 11, Exhibit "J"	Disputes the Albums were created pursuant to the alleged Agreement. In or
18	thereto, Vargas Depo at 27:17-22,	about 2013, Chavez, and Chavez alone,
19	143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at	entered into an oral distribution agreement, not an oral recording
20	¶ 12, Exhibit "K" thereto, Flores Depo	agreement, with Hyphy. Chavez Decl.,
21	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	Dkt. 46-2 at ¶ 7. The testimony cited by Hyphy does not
22		support statement # 71 inasmuch as
23		neither Flores nor Vargas testifies they personally provided any original or
24		creative material that was incorporated
25		into the sound recordings of the Albums, or provide any description of same.
26		
27		Chavez is Los Originales De San Juan's sole founder, and principal. Chavez
28		, <b>FF</b>

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Decl., Dkt. 46-2 at ¶ 3; Defendants'
4		Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the founder and principal");
5		Defendants' First Amended
6		Counterclaim, Dkt. 15 at ¶ 15 (same).
7		Florez and Vargas did not possess any
		alienable right, title or interest in the
8		Albums. Chavez was the sole producer, sole author and sole creator of the sound
9		recordings of the Albums and therefore
10		possessed all original rights, title and interest in the sound recordings of the
11		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
12		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
13		(disclaiming Hyphy's involvement in the
14		recording of - "Naci Con Suerte de Rey Con Mariachi").
15		Con mariachi ).
16	72.It should be noted here that Flores	Disputes that either Flores or Vargas
17	and Vargas were plainly joint	were joint authors in the Albums, or that
18	authors of the Albums, including based on the fact that Flores and	they shared equally in the profits of Los Originales De San Juan or were granted
19	Vargas shared equally in all profits	equal access to inspect records.
20	of the Band, and were granted equal access to inspect all records related	Disputes the Albums were created
21	to the Band's receipt of all such	pursuant to the alleged Agreement. In or
22	profits.	about 2013, Chavez, and Chavez alone, entered into an oral distribution
23	Begakis Decl. at ¶ 14, Exhibit "M"	agreement, not an oral recording
24	thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18,	agreement, with Hyphy. Chavez Decl.,
25	41:13-42:2; Begakis Decl. at ¶ 11,	Dkt. 46-2 at ¶ 7.
26	Exhibit "J" thereto, Vargas Depo at	The Vargas Decl. and the Flores Decl.
27	27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis	cited by Hyphy does not support statement # 72 inasmuch as neither
28	Decl. at ¶ 12, Exhibit "K" thereto,	declarant states he is a "co-equal"

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1		
2	And Supporting Evidence: Flores Depo at 47:15-25, 82:13-15,	Supporting Evidence: member of Los Originales de San Juan,
3	82:22-83:2, 83:4-13, 85:25-86:11,	or state anything else therein that has a
4	86:13-21.	similar meaning to the quoted language.
5		They merely state they provided backing musician services by playing their
6		instrument in the creation of the Albums;
7		they do not state that they personally provided any original or creative
8		material that was incorporated into the
		sound recordings of the Albums, or
9		provide any description of same. See
10		generally Florez Decl.; Vargas Decl.
11		Chavez is Los Originales De San Juan's
12		sole founder, and principal. Chavez
13		Decl., Dkt. 46-2 at ¶ 3; Defendants'
		Counterclaim, Dkt. 7 at ¶ 15 (referring to
14		Chavez as "the founder and principal");
15		Defendants' First Amended Counterclaim, Dkt. 15 at ¶ 15 (same).
16		Counterclaim, Dkt. 13 at   13 (same).
17		Florez and Vargas did not possess any
18		alienable right, title or interest in the Albums. Chavez was the sole producer,
19		sole author and sole creator of the sound
20		recordings of the Albums and therefore possessed all original rights, title and
21		interest in the sound recordings of the
		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
22		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
23		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
24		recording of - "Naci Con Suerte de Rey
25		Con Mariachi").
26		The cited deposition testimony of
27		Chavez does not support statement #72
		inasmuch as he testified that he paid
28		

1 Hyphy's	<b>Undisputed Material Facts</b>	Opposing Party's Response and
2 and	<b>Supporting Evidence:</b>	Supporting Evidence:
3 72 1 11:		Vargas and Flores a weekly salary.
'    73. In addi	tion to its original creative	Disputes. The cited deposition
	outions to the production,	testimony of Martinez, and the
) III	ing and overall creation of the riginales Albums, Hyphy also	interrogatory response referred to therein, does not support statement #73
	ed and created the artwork	inasmuch as such testimony states the
II I	ed on the cover of each Album	Album Artwork was designed and
the "A	Album Artwork").	created by Marcelino Mendoza, an
		independent contractor.
11 1	Decl. at ¶ 7; Begakis Decl. at	
at 127:12-2	it "G" thereto, Martinez Depo 21.	Further disputes to the extent statement #73 claims that Hyphy provided
		"original creative contributions to the
		production, recording and overall
		creation of the Los Originales Albums."
		Chavez was the sole producer, sole author and sole creator of the sound
		recordings of the Albums and therefore
		possessed all original rights, title and
		interest in the sound recordings of the
		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
		involvement in the recording of - "Naci
		Con Suerte de Rey Con Mariachi").
		Neither Hyphy nor anyone affiliated with
		Hyphy provided any original creative
		input into the recording of the Albums, provided any original material for the
		sound recordings of the Albums or
		exercised any artistic, production or
		recording control over the Albums.
		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
		Chavez never had an agreement or
		understanding with Hyphy, or anyone

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
74. Hyphy released the Albums, with the Album Artwork, for distribution through all available digital service providers (the " <i>DSPs</i> ") between 2013 and 2017.	Undisputed.
Martinez Decl. at ¶ 8, Exhibit "B" thereto; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23;	
51:18-25; 67:24-69:5. 75. Thereafter, Hyphy obtained	Disputes to the extent that statement #7:
copyright registrations for all of such Album Artwork.	implies that the release dates of the various Albums through DSPs between 2013 and 2017 was proximate in time to
Martinez Decl. at ¶ 9, Exhibit "C"	the dates that Hyphy obtained copyright
thereto; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo at 133:9-	registration for the Album Artwork. Hyphy obtained all such registration in
136:5.	May 2020. Martinez Depo at 133:9-
76. Yellowcake is a competing record	136:5.  Disputes. Yellowcake is primarily
label and distributor of sound	engaged in the business of, among other
recordings, utilizing Colonize as its "distribution arm" to release and	things, purchasing, owning, licensing and exploiting intellectual property
exploit rights that Yellowcake	rights. Declaration of Kevin Berger (th
acquires.	"Berger Decl."), Dkt. 82-14 at ¶ 3.
Begakis Decl. at ¶ 9, Exhibit "H"	Colonize is a digital music distributor that enters into contracts with numerous
thereto, Deposition Transcript of Kevin	different record labels and performers.
Berger (" <i>Berger Depo</i> ") at 91:19-23; Begakis Decl. at ¶ 10, Exhibit "I"	Declaration of Jose David Hernandez (the "Hernandez Decl."), Dkt. 82-16 at
thereto, Deposition Transcript of Jose	¶¶ 3-6. Yellowcake and Colonize are
David Hernandez, Volume I	two completely separate entities with
(" <i>Hernandez Depo I</i> ") at 77:19-21.  77. Hernandez is a co-owner of both	two different owners. Undisputed that Hernandez is an owner
Yellowcake and Colonize.	of Colonize and that he once was an

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 51:9-11, 116:18-117:14.  78. In his position as co-owner of both Yellowcake and Colonize, Hernandez has admitted that both entities have operated – and continue to operate – as one single economic entity, with common ownership, common business operations, common office space, common staff, and many other common resources.	Disputes. The cited deposition testimony of Hernandez does not support statement #78 inasmuch as Hernandez testified that Colonize "gets some stuff of value" for distributing Yellowcake's music. Hernandez Depo I at 80:13.
Begakis Decl. at ¶ 10, Exhibit "I"	
thereto, Hernandez Depo I at 80:3-20. 79. In or about March 2019, Hernandez	Disputes. The cited deposition
approached Chavez about selling the Los Originales Albums to	testimony of Chavez does not support statement #79 inasmuch as Chavez
Yellowcake.	testified he does not remember when
Begakis Decl. at ¶ 14, Exhibit "M"	Hernandez approached him, but it was in the year 2020 (Chavez Depo I at 78:9-
thereto, Chavez Depo II at 77:13-17,	25). The cited deposition testimony of
79:7-9, 79:17-80:2, 81:7-16; Begakis Decl. at ¶ 10, Exhibit "I" thereto,	Hernandez does not support statement #79 inasmuch as Hernandez does not
Hernandez Depo I at 148:24-149:5.	testify that he approached Chavez, and
	he testifies "it could have been 2018" when he first discussed with Chavez
	purchasing the Albums (Hernandez
	Depo I at 148:24-149:5).
	On or about March 21, 2019, Chavez
	sold the entirety of his rights, title and interest in the copyrights of the sound
	recordings of the Albums to Yellowcake.
	Chavez Decl., Dkt. 46-2 at ¶¶ 15; Asset Purchase Agreement, Dkt. 83-3.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1	and Supporting Evidence:	Supporting Evidence:
2	80. Hernandez had previously worked	Disputes. Hernandez never worked for
3	with Hyphy and had secretly gained	Hyphy, and statement # 80 is
4	valuable information on Hyphy's	unsubstantiated and self-serving.
5	business and relationship with Chavez. Hernandez therefor knew	The cited paragraph in the Martinez
6	that Hyphy only had an oral	Decl. stating that Hernandez "used to
7	agreement with the Group.	work with Hyphy" and therefore
		"obtained valuable information
8	Martinez Decl. at ¶ 3; Begakis Decl. at	including the knowledge Hyphy's
9	¶ 8, Exhibit "G" thereto, Martinez Depo at 26:2-12.	Agreement with the Group was oral" is misleading because Martinez testified
10	at 20.2-12.	Hernandez was merely an initial third-
		party distributer of Hyphy music
11		(Martinez Depo. at 26:6-12), and such
12		statement is pure speculation as Martinez
13		also testified that Hyphy's business
14		dealings with Hernandez began and
		ended in 2010, approximately three years prior to the existence of the alleged oral
15		agreement (Martinez Depo. at 15:10-15,
16		<del>26:20-23).</del>
17	81. Hernandez approached and	Disputes. The cited testimony of Chavez
18	convinced Chavez, without Hyphy	does not refer to any knowledge his
	or the rest of the Group's knowledge, to assign the Albums to	backing musicians may or may not have had regarding the alleged conversation.
19	Yellowcake in exchange for	Moreover, Chavez testified that the
20	payment of \$500,000.	alleged transaction was a purchase, not
21		an assignment. The cited testimony of
22	Begakis Decl. at ¶ 14, Exhibit "M" thereto, Chavez Depo II at 77:13-17,	Hernandez is unrelated to statement #81.
23	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	Further disputes to the extent statement #
	Begakis Decl. at ¶ 10, Exhibit "I"	81 implies that anyone other than
24	thereto, Hernandez Depo I at 107:4-20.	Chavez possessed the right to convey
25		any right in the Albums. Defendant
26		consistently confirmed in both versions
		of its Counterclaims that the alleged oral agreement was between only Hyphy and
27		Chavez. Defendant's Counterclaim, Dkt.
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		17 at ¶¶ 15-17; Defendant's First
4		Amended Counterclaim, Dkt. 15 at ¶¶ 15-17.
5		Moreover, Martinez, the person who
6		made the alleged oral agreement on
7		behalf of Defendant, further confirmed,
8		repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl.,
9		that the alleged oral agreement was
10		between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt.
11		45-1 at $\P\P$ 2, 4, 7, 8.
12		Defendant confirmed in other of its
13		filings with the Court that the alleged
14		oral agreement was between only Hyphy
15		and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss
		Hyphy's Counterclaims. Hyphy Opp. To
16		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
17		pg. 1 lns. 16-18.
18		Eleraz and Vargas did not negges any
19		Florez and Vargas did not possess any alienable right, title or interest in the
20		Albums. Chavez was the sole producer,
21		sole author and sole creator of the sound recordings of the Albums and therefore
22		possessed all original rights, title and
23		interest in the sound recordings of the
24		Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
25		10; Martinez Depo. at 60:5-61:2
26		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
27		Con Mariachi").
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Neither Hyphy nor anyone affiliated with
4		Hyphy provided any original creative input into the recording of the Albums,
5		provided any original material for the
		sound recordings of the Albums or
6		exercised any artistic, production or recording control over the Albums.
7		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
8		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
9		Chavez never had an agreement or
0		understanding with Hyphy, or anyone
1		else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
2		at ¶¶ 8-13, 19.
3	82. Chavez and Yellowcake codified	Undisputed Chavez and Yellowcake
4	their purported agreement via an "Asset Purchase and Assignment	entered into the Asset Purchase Agreement set forth at Dkt. 83-3.
5	Agreement" executed on or about	Agreement set fortil at Dkt. 63-3.
	March 21, 2019 (the " <i>Asset</i>	
6	Purchase Agreement").	
7	Begakis Decl. at ¶ 7, Exhibit "F"	
8	thereto, Plaintiff/Counterdefendant's	
9	Document Production (PLF000021-PLF000039).	
0	83. In Section 13.e. of the Asset	Undisputed.
1	Purchase Agreement, Chavez	Chaispatea.
2	represented and warranted to Yellowcake that Chavez was "the	
23	only owner of" the Albums, and	
24	possessed "good and marketable	
5	title" thereto at the time of sale.	
	Begakis Decl. at ¶ 7, Exhibit "F"	
6	thereto, Plaintiff/Counterdefendant's	
7	Document Production (PLF00024).  84. Chavez, however, never obtained	Disputes statement #84 because it
28		

1	<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
2	and Supporting Evidence:	<b>Supporting Evidence:</b>
3	signed written agreements from	incorrectly assumes Flores, Vargas and
4	Flores, Vargas or Hyphy acquiring each party's respective	Hyphy possessed "respective contributions to, and rights in, the
5	contributions to, and rights in, the	Albums and sound recordings embodied
6	Albums and sound recordings embodied thereon.	thereon"; which they did not.
7		Further disputes to the extent statement #
8	Begakis Decl. at ¶ 6, Exhibit "E" thereto, Yellowcake Interrogatory	84 implies that anyone other than Chavez possessed the right to convey
9	Responses at pp. 4-5; Begakis Decl. at ¶	any right in the Albums. Defendant
10	7, Exhibit "F" thereto, Yellowcake Responses to Request for Production at	consistently confirmed in both versions of its Counterclaims that the alleged oral
11	p. 4.	agreement was between only Hyphy and Chavez. Defendant's Counterclaim, Dkt.
12		7 at ¶¶ 15-17; Defendant's First
13		Amended Counterclaim, Dkt. 15 at ¶¶ 15-17.
14		
15		Moreover, Martinez, the person who made the alleged oral agreement on
16		behalf of Defendant, further confirmed,
17		repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl.,
18		that the alleged oral agreement was
19		between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt.
20		45-1 at $\P\P$ 2, 4, 7, 8.
21		Defendant confirmed in other of its
22		filings with the Court that the alleged
23		oral agreement was between only Hyphy and Chavez. Hyphy's Opposition to
24		Yellowcake's Motion to Dismiss
25		Hyphy's Counterclaims. Hyphy Opp. To MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.
26		5; August 2021 Hyphy Reply, Dkt. 45 at
27		pg. 1 lns. 16-18.
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Florez and Vargas did not possess any
4		alienable right, title or interest in the Albums. Chavez was the sole producer,
5		sole author and sole creator of the sound
		recordings of the Albums and therefore
6		possessed all original rights, title and interest in the sound recordings of the
7		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
8		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
9		Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the recording of - "Naci
10		Con Suerte de Rey Con Mariachi").
11		NI '41 II 1 00'1' 4 1 '41
12		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
13		input into the recording of the Albums,
		provided any original material for the
14		sound recordings of the Albums or
15		exercised any artistic, production or recording control over the Albums.
16		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
17		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
18		Chavez never had an agreement or
19		understanding with Hyphy, or anyone
20		else, that it would be deemed a co-author
		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
21	85. Since commencing this litigation,	Disputes that Hyphy experienced any
22	Yellowcake entirely failed to serve	harm by not receiving initial disclosures
23	any Initial Disclosures.	containing damages information, and same was justified, because Yellowcake
24	Begakis Decl. at ¶ 3.	was not in possession of information
25		regarding the damages it is seeking in
26		this case until Hyphy disclosed same to Yellowcake; moreover, inasmuch as 17
27		U.S.C. 504(c) permits profits to be
28		calculated on gross amounts, Hyphy

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1		
2	and Supporting Evidence:	Supporting Evidence:
3		itself has already calculated and provided Yellowcake with such amounts.
4	86. Since commencing this litigation,	Disputed. Pursuant to 17 U.S.C. 504(c)
	Yellowcake has also never claimed	Yellowcake is entitled to elect between
5	that it is entitled to any damages	statutory damages and actual damages at
6	besides alleged actual and punitive	anytime final judgment is rendered; and
7	damages.	Yellowcake has elected to seek Hyphy's
		profits which are a category of actual
8	Begakis Decl. at ¶ 4.	damages pursuant to 17 U.S.C. §§
9	07 Singa gammanain a 41 in 1:4: -4:	504(a)(1) and 504(b)(c).
10	87. Since commencing this litigation, Yellowcake failed to submit any	Disputes that such evidence is necessary or relevant for Yellowcake to prove
	evidence, whether in discovery or	damages; pursuant to 17 U.S.C. 504(c)
11	by way of the opinion of any expert	Yellowcake is entitled to elect between
12	as to what a willing buyer would	statutory damages and actual damages at
13	pay for the Albums.	anytime final judgment is rendered; and
		Yellowcake has elected to seek Hyphy's
14	Begakis Decl. at ¶ 5.	profits which are a category of actual
15		damages pursuant to 17 U.S.C. §§
16		504(a)(1) and 504(b)(c), and fair market value is not the only measure of damages
		under 17 U.S.C 504.
17	88. Hyphy has been exploiting each of	
18	the Albums since their respective	Undisputed.
19	publication between 2013 and 2017.	
20		
21	See Martinez Decl. at ¶ 8, Exhibit "B" thereto.	
	89. Yellowcake did not obtain copyright	Disputed. The effective dates of
22	registrations in the albums until	Yellowcake's copyright registrations, as
23	March of 2020.	reflected thereon, are in February 2020.
24	Begakis Decl. at ¶ 7, Exhibit "F"	
25	thereto, Plaintiff/Counterdefendant's	
	Document Production (PLF000001-	
26	PLF000021).	
27		

1

2

### Yellowcake's Second Claim for Injunctive Relief Fails Because D. Yellowcake's First Claim For Copyright Infringement Fails

3		
4	Hyphy's Undisputed Material Facts	Opposing Party's Response and
5	and Supporting Evidence:	Supporting Evidence:
6	90. Defendant/Counterclaimant HYPHY MUSIC, INC. (" <i>Hyphy</i> ")	Undisputed.
7	is a record label in the business of	
8	collaborating with recording artists	
9	to produce, distribute, and otherwise exploit sound and audiovisual	
10	recordings, coupled with artwork.	
11	Declaration of John Begakis ("Begakis	
12	<b>Decl.</b> ") at ¶ 8, Exhibit "G" thereto, Jose	
13	Martinez Deposition Transcript (" <i>Martinez Depo</i> ") at 13:6-14:6.	
14	91. Counter-Defendant JESUS	Undisputed that Chavez is the lead
	CHAVEZ, SR ("Chavez") is the	singer when he performs with his
15	lead singer of the Spanish-language	backing band, Los Originales De San Juan, and he recorded the six albums that
16	musical group Los Originales De San Juan (the " <i>Group</i> ").	is the subject of this action, titled: (i) Los
17		Originales de San Juan- "El
18	Begakis Decl. at ¶ 13, Exhibit "L"	Campesino"; (ii) Los Originales de San
19	thereto, Jesus Chavez, Sr. Deposition, Volume I (" <i>Chavez Depo I</i> ") at 25:13-	Juan-"Corridos de Poca M"; (iii) Los Originales de San Juan-"En Vivo Desde
20	14; Begakis Decl. at ¶ 14, Exhibit "M"	La Cantina de Mi Barrio"; (iv) Los
21	thereto, Jesus Chavez, Sr. Deposition,	Originales de San Juan-"Nuestra
22	Volume II (" <i>Chavez Depo II</i> ") at 16:22-17:5.	Historia En Vivo"; (v) Los Originales de San Juan- "Amigos y Contrarios"; and
		(vi) Los Originales de San Juan-"Naci
23		Con Suerte de Rey Con Mariachi"
24		(collectively "Albums").
25		Disputes to the extent it implies lead
26		singer was Chavez's only role in Los
27		Originales De San Juan. Chavez is Los Originales De San Juan's sole founder,
28		and principal. Chavez Decl., Dkt. 46-2

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		at ¶ 3; Defendants' Counterclaim, Dkt. 7
4		at ¶ 15 (referring to Chavez as "the founder and principal"); Defendants'
5		First Amended Counterclaim, Dkt. 15 at
6		¶ 15 (same).
		Chavez was the sole producer, sole
7		author and sole creator of the sound
8		recordings of the Albums and therefore possessed all original rights, title and
9		interest in the sound recordings of the
.0		Albums. Declaration of Jesus Chavez,
1		Sr. (the "Chavez Decl."), Dkt. 46-2 at ¶¶ 8-21; Declaration of Hector Rosales (the
2		"Rosales Decl."), Dkt. 46-1 at ¶¶ 7-10;
3		Martinez Depo. at 60:5-61:2
l4		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
15		Con Mariachi").
16	92. The Group operates as a co-equal	Undisputed Flores formerly played the
17	partnership comprised of Chavez and fellow band members Domingo	accordion, and that Vargas formerly played the drums at times for Chavez
	Torres Flores (" <i>Flores</i> "), who plays	when Chavez performed with his
18	the accordion, and Alfonso Vargas (" <i>Vargas</i> "), who plays the drums.	backing band, Los Originales De San
19	( rangus ), who plays the drullis.	Juan.
20	Begakis Decl. at ¶ 13, Exhibit "L"	Disputes that either Flores or Vargas
21	thereto, Chavez Depo I at 18:16-19:3, 20:8-16, 21:16-19; Begakis Decl. at ¶	were co-equal partners in Los Originales De San Juan. Chavez was the sole
22	11, Exhibit "J" thereto, Deposition	producer, sole author and sole creator of
23	Transcript of Alfonso Vargas ("Vargas	the sound recordings of the Albums and
24	<b>Depo</b> ") at 17:16-19; 27:17-22; 143:14-16; Begakis Decl. at ¶ 12, Exhibit "K"	therefore possessed all original rights, title and interest in the sound recordings
25	thereto, Deposition Transcript of	of the Albums. Chavez Decl., Dkt. 46-2
26	Domingo Torres Flores ("Flores	at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
	<b>Depo</b> ") at 47:15-25, 48:19-23.	7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
$\begin{bmatrix} 27 \\ 28 \end{bmatrix}$		recording of - "Naci Con Suerte de Rey

	Hyphy's Undisputed Material Facts	Onnosing Party's Pasnansa and
1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:  Con Mariachi").
3	93. In or about February 2013, Hyphy	Disputes the Albums were created
4	and the Group began working	pursuant to the alleged Agreement. In or
5	together to co-create various sound recordings to be embodied on	about 2013, Chavez, and Chavez alone, entered into an oral distribution
6	multiple albums, which they orally agreed were to be owned by Hyphy	agreement, not an oral recording agreement, with Hyphy. Chavez Decl.,
7 8	(the "Agreement").	Dkt. 46-2 at ¶ 7.
	Declaration of Jose Martinez	The cited deposition testimony of
9	(" <i>Martinez Decl.</i> ") at ¶ 3; Decl. at ¶ 13,	Chavez does not support statement #93
10	Exhibit "L" thereto, Chavez Depo I at 34:7-11; Decl. at ¶ 14, Exhibit "M"	inasmuch as Chavez's testimony that an Album was recorded "with Hyphy"
11	thereto, Chavez Depo II at 19:14-17,	refers to such Album as being part of the
12	32:16-20, 35:12-21.	distribution agreement between Chavez
13		and Hyphy.
14		Defendant consistently confirmed in
15		both versions of its Counterclaims that the alleged oral agreement was between
16		only Hyphy and Chavez. Defendant's
17		Counterclaim, Dkt. 7 at ¶¶ 15-17; Defendant's First Amended
18		Counterclaim, Dkt. 15 at ¶¶ 15-17.
9		Managyan Mantings the name with
20		Moreover, Martinez, the person who made the alleged oral agreement on
21		behalf of Defendant, further confirmed,
22		repeatedly, under penalty of perjury, in his Declaration in support of Reply to
23		Counter-Defendants' Challenge to the
24		Validity of Certain Copyright Registrations (the "August 2021
25		Martinez Reply Decl."), that the alleged
26		oral agreement was between only Hyphy and Chavez. August 2021 Martinez
27		Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
28		
28		

1	<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Defendant confirmed in other of its
4		filings with the Court that the alleged oral agreement was between only Hyphy
		and Chavez. Hyphy's Opposition to
5		Yellowcake's Motion to Dismiss
6		Hyphy's Counterclaims (the "Hyphy
7		Opp. To MTD"), Dkt. 27 at pg. 1 ln. 27 –
8		pg. 2 ln. 5; Hyphy's Reply to Counterdefendants' Challenge to the
		Validity of Certain Copyright
9		Registrations (the "August 2021 Hyphy
10		Reply"), Dkt. 45 at pg. 1 lns. 16-18.
11		Florez and Vargas did not possess any
12		alienable right, title or interest in the
13		Albums. Chavez was the sole producer,
		sole author and sole creator of the sound
14		recordings of the Albums and therefore
15		possessed all original rights, title and interest in the sound recordings of the
16		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
17		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
18		10; Martinez Depo. at 60:5-61:2
		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
19		Con Mariachi").
20		,
21		Neither Hyphy nor anyone affiliated with
22		Hyphy provided any original creative input into the recording of the Albums,
		provided any original material for the
23		sound recordings of the Albums or
24		exercised any artistic, production or
25		recording control over the Albums.
26		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
27		, , , , , , , , , , , , , , , , , , , ,
		Chavez never had an agreement or
28		

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	understanding with Hyphy, or anyone else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
94. The albums created pursuant to the Agreement were entitled (1)  "Amigos y Contrarios"; (2)  "Corridos de Poca M"; (3) "El Campesino"; (4) "Desde La Cantina de Mi Barrio (En Vivo)"; and (5)  "Nuestra Historia (En Vivo)"	at ¶¶ 8-13, 19.  Disputes. Six, not five, albums are the subject of Yellowcake's claims, <i>i.e.</i> , the six "Albums" identified in Yellowcake's response #2 above. Further disputes the Albums were created pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone, entered into
(collectively, the "Los Originales	an oral distribution agreement, not an
Albums" or "Albums").	oral recording agreement, with Hyphy. Chavez Decl., Dkt. 46-2 at ¶ 7.
Martinez Decl. at ¶ 4; Begakis Decl. at	Chavez Been, Bkt. 10 2 at   7.
¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23, 51:22-25.	Defendant consistently confirmed in both versions of its Counterclaims that
, 20,01.22 20.	the alleged oral agreement was between
	only Hyphy and Chavez. Defendant's Counterclaim, Dkt. 7 at ¶¶ 15-17;
	Defendant's First Amended
	Counterclaim, Dkt. 15 at ¶¶ 15-17.
	Moreover, Martinez, the person who
	made the alleged oral agreement on behalf of Defendant, further confirmed,
	repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl.,
	that the alleged oral agreement was
	between only Hyphy and Chavez.
	August 2021 Martinez Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
	Defendant confirmed in other of its
	filings with the Court that the alleged
	oral agreement was between only Hyphy
	and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Hyphy's Counterclaims. Hyphy Opp. To
4		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
5		pg. 1 lns. 16-18.
6		Florez and Vargas did not possess any
7		alienable right, title or interest in the
8		Albums. Chavez was the sole producer, sole author and sole creator of the sound
9		recordings of the Albums and therefore
10		possessed all original rights, title and interest in the sound recordings of the
11		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
12		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
13		involvement in the recording of - "Naci
14		Con Suerte de Rey Con Mariachi").
15		Neither Hyphy nor anyone affiliated with
16		Hyphy provided any original creative input into the recording of the Albums,
17		provided any original material for the
18		sound recordings of the Albums or exercised any artistic, production or
19		recording control over the Albums.
20		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
21		Rosales Deel., DRI. 70-1 at       /-10.
22		Chavez never had an agreement or understanding with Hyphy, or anyone
23		else, that it would be deemed a co-author
24		of the Albums. Chavez Decl., Dkt. 46-2
25	95. One of the other two albums	at ¶¶ 8-13, 19. Undisputed.
26	identified in Yellowcake's	Chaispatea.
27	Complaint, entitled "Chuy Chavez y Sus Amigos," has no connection to	
28	this dispute and wasn't even	

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	recorded by Chavez.	
4	Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
5	at 44:24:-9, 154:11-155:25.	
6	96. Though this Agreement was not	Disputes the Albums were created
7	initially memorialized in writing, Flores and Vargas understood that	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone,
8	such Agreement existed.	entered into an oral distribution agreement, not an oral recording
9	Martinez Decl. at ¶ 5. Declaration of	agreement, with Hyphy. Chavez Decl.,
10	Domingo Torres Flores ("Flores Decl.") at ¶ 3; Declaration of Alfonso	Dkt. 46-2 at ¶ 7.
11	Vargas ("Vargas Decl.") at $\P$ 3.	Defendant consistently confirmed in
12 13		both versions of its Counterclaims that the alleged oral agreement was between
		only Hyphy and Chavez. Defendant's
14		Counterclaim, Dkt. 7 at ¶¶ 15-17; Defendant's First Amended
15		Counterclaim, Dkt. 15 at ¶¶ 15-17.
16 17		Moreover, Martinez, the person who
18		made the alleged oral agreement on
19		behalf of Defendant, further confirmed, repeatedly, under penalty of perjury, in
20		the August 2021 Martinez Reply Decl.,
21		that the alleged oral agreement was between only Hyphy and Chavez.
22		August 2021 Martinez Reply Decl., Dkt.
23		45-1 at $\P\P$ 2, 4, 7, 8.
24		Defendant confirmed in other of its
25		filings with the Court that the alleged oral agreement was between only Hyphy
26		and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss
27		Hyphy's Counterclaims. Hyphy Opp. To
28		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		5; August 2021 Hyphy Reply, Dkt. 45 at
4		pg. 1 lns. 16-18.
5		Florez and Vargas did not possess any
6		alienable right, title or interest in the
7		Albums. Chavez was the sole producer, sole author and sole creator of the sound
.		recordings of the Albums and therefore
8		possessed all original rights, title and interest in the sound recordings of the
9		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
10		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
11		involvement in the recording of - "Naci
12		Con Suerte de Rey Con Mariachi").
13		Neither Hyphy nor anyone affiliated with
14		Hyphy provided any original creative
15		input into the recording of the Albums,
16		provided any original material for the sound recordings of the Albums or
17		exercised any artistic, production or
18		recording control over the Albums.
		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
19		
20		Chavez never had an agreement or understanding with Hyphy, or anyone
21		else, that it would be deemed a co-author
22		of the Albums. Chavez Decl., Dkt. 46-2
23	97. Flores and Vargas, as co-equal	at ¶¶ 8-13, 19. Disputes that either Flores or Vargas
24	members of the Group, also	were co-equal partners in Los Originales
25	intended that all rights in and to	De San Juan.
26	their recording services rendered pursuant to the Agreement be	Disputes the Albums were created
27	conveyed Hyphy.	pursuant to the alleged Agreement. In or
28		about 2013, Chavez, and Chavez alone,

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1	and Supporting Evidence:	Supporting Evidence:
2	Martinez Decl. at ¶ 4. Flores Decl. at ¶¶	entered into an oral distribution
3	3-5; Vargas Decl. at ¶¶ 3-5.	agreement, not an oral recording
4		agreement, with Hyphy. Chavez Decl.,
5		Dkt. 46-2 at ¶ 7.
6		The Vargas Decl. and the Flores Decl.
		cited by Hyphy does not support
7		statement # 93 inasmuch as neither
8		declarant states he is a "co-equal"
9		member of Los Originales de San Juan,
10		or state anything else therein that has a similar meaning to the quoted language.
11		They merely state they provided backing
		musician services by playing their
12		instrument in the creation of the Albums;
13		they do not state that they personally provided any original or creative
14		material that was incorporated into the
15		sound recordings of the Albums, or
		provide any description of same. See
16		generally Florez Decl.; Vargas Decl.
17		Chavez is Los Originales De San Juan's
18		sole founder, and principal. Chavez
19		Decl., Dkt. 46-2 at ¶ 3; Defendants'
20		Counterclaim, Dkt. 7 at ¶ 15 (referring to
		Chavez as "the founder and principal"); Defendants' First Amended
21		Counterclaim, Dkt. 15 at ¶ 15 (same).
22		
23		Florez and Vargas did not possess any
24		alienable right, title or interest in the Albums. Chavez was the sole producer,
25		sole author and sole creator of the sound
		recordings of the Albums and therefore
26		possessed all original rights, title and
27		interest in the sound recordings of the
28		Albums. Chavez Decl., Dkt. 46-2 at ¶¶

<b>Hyphy's Undisputed Material Facts</b>	<b>Opposing Party's Response and</b>
and Supporting Evidence:	<b>Supporting Evidence:</b>
	8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
	10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey
	Con Mariachi").
98. Flores and Vargas also later	Disputes Florez and Vargas possessed
confirmed their belief and intent to	any alienable right, title or interest in the
convey all rights to Hyphy by	Albums. Chavez was the sole producer,
executing enforceable Copyright	sole author and sole creator of the sound
Assignment Agreements on or about	recordings of the Albums and therefore possessed all original rights, title and
March 22, 2022 (collectively, the "Assignments").	interest in the sound recordings of the
Tissignments ).	Albums. Chavez Decl., Dkt. 46-2 at ¶¶
Martinez Decl. at ¶ 5, Exhibit "A"	8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
thereto.	10; Martinez Depo. at 60:5-61:2
	(disclaiming Hyphy's involvement in the
	recording of -"Naci Con Suerte de Rey
	Con Mariachi").
	Prior to 2019 Chavez had never agreed
	to alienate any of his ownership interest
	in the Albums to anyone. Chavez Decl.,
	Dkt. 46-2 at ¶¶ 14. On or about March
	21, 2019, Chavez sold the entirety of his
	rights, title and interest in the copyrights of the sound recordings of the Albums to
	Yellowcake. Chavez Decl., Dkt. 46-2 at
	¶¶ 15; Asset Purchase Agreement, Dkt.
	83-3.
99. Unlike larger record labels,	Disputes. Chavez was the sole producer,
however, Hyphy closely	sole author and sole creator of the sound
collaborated with the Group to	recordings of the Albums and therefore
create the Albums.	possessed all original rights, title and interest in the sound recordings of the
Martinez Decl. at ¶ 6; Begakis Decl. at	interest in the sound recordings of the Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
¶ 8, Exhibit "G" thereto, Martinez Depo	Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
··	
at 75:6-76:25, 83:11-84:22, 84:24-85:8,	Depo. at 60:5-61:2 (disclaiming Hyphy's

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Con Suerte de Rey Con Mariachi").
4		Neither Hyphy nor anyone affiliated with
5		Hyphy provided any original creative input into the recording of the Albums,
6		provided any original material for the
7		sound recordings of the Albums or exercised any artistic, production or
8		recording control over the Albums.
9		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
10		Rosales Deel., DRt. 40-1 at       7-10.
11		Chavez never had an agreement or understanding with Hyphy, or anyone
12		else, that it would be deemed a co-author
13		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
14	100. For the first three (of five) of the	Disputes. Chavez was the sole producer,
15	Los Originales Albums, Hyphy helped determine the "theme" and	sole author and sole creator of the sound recordings of the Albums and therefore
16	overall creative direction of each	possessed all original rights, title and
17	Album.	interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
18	Martinez Decl. at ¶ 6.	8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
19		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
20		recording of - "Naci Con Suerte de Rey
21		Con Mariachi").
22		Neither Hyphy nor anyone affiliated with
23		Hyphy provided any original creative input into the recording of the Albums,
24		provided any original material for the
25		sound recordings of the Albums or exercised any artistic, production or
26		recording control over the Albums.
27		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
28		Rusales Decl., DKt. 40-1 at       /-10.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3 4		Chavez never had an agreement or understanding with Hyphy, or anyone else, that it would be deemed a co-author
5 6		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
7	101. For the first three (of five) of the Los Originales Albums, Hyphy	Disputes. The deposition transcript testimony cited by Hyphy does not
8	selected the songs to be included in	support statement # 101 inasmuch as
9	each Album.	such testimony relates only to the album titled, "Corridos de Poca M."
10	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	Moreover, Chavez was the sole
12	at 83:11-84:22.	producer, sole author and sole creator of the sound recordings of the Albums and
13		therefore possessed all original rights,
14		title and interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2
15		at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
16		(disclaiming Hyphy's involvement in the recording of -"Naci Con Suerte de Rey
17 18		Con Mariachi").
19		Neither Hyphy nor anyone affiliated with
20		Hyphy provided any original creative input into the recording of the Albums,
21		provided any original material for the sound recordings of the Albums or
22		exercised any artistic, production or
23		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
24 25		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
26		Chavez never had an agreement or
27		understanding with Hyphy, or anyone else, that it would be deemed a co-author
28		of the Albums. Chavez Decl., Dkt. 46-2

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	at ¶¶ 8-13, 19.
102. For the first three (of five) of the	Disputes. In or about 2013, Chavez, and
Los Originales Albums, Hyphy selected the recording studio, and	Chavez alone, entered into an oral distribution agreement, not an oral
paid for all costs associated with the	recording agreement, with Hyphy
recording of each Album.	(Chavez Decl., Dkt. 46-2 at ¶ 7) whereby Hyphy paid for recording costs as part of
Martinez Decl. at ¶ 6.	such agreement.
	Moreover, Chavez was the sole
	producer, sole author and sole creator of the sound recordings of the Albums and
	therefore possessed all original rights,
	title and interest in the sound recordings
	of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
	7-10; Martinez Depo. at 60:5-61:2
	(disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey Con Mariachi").
	,
	Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
	input into the recording of the Albums, provided any original material for the
	sound recordings of the Albums or
	exercised any artistic, production or recording control over the Albums.
	Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
	Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
	at ¶¶ 8-13, 19.
103. For the first three (of five) of the	Disputes. The deposition transcript
Los Originales Albums, Hyphy	testimony cited by Hyphy does not

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	<b>Supporting Evidence:</b>
hired the sound engineer.	support statement # 103 inasmuch as it
Martinez Decl. at ¶ 6; Begakis Decl. at	does not refer to who hired Hector Rosales, who was the audio engineer for
¶ 8, Exhibit "G" thereto, Martinez Depo	_
at 59:21-60:7, 61:10-16.	"Corridos de Poca M," and "El
	Campesino."
	Hector Rosales was engaged by Chavez
	to act as audio engineer for the Albums.
	Rosales Decl., Dkt. 46-1 at ¶ 5.
104. For the first three (of five) of the	Disputes. In or about 2013, Chavez, and
Los Originales Albums, Hyphy paid the Group a substantial amount for	Chavez alone, entered into an oral distribution agreement, not an oral
recording the Albums.	recording agreement, with Hyphy, who
-	paid Chavez in accordance with the
Martinez Decl. at ¶ 6.	terms of their oral distribution agreement
105. And for the first three (of five) of	(Chavez Decl., Dkt. 46-2 at ¶ 7).  Disputes. The cited deposition
the Los Originales Albums, Hyphy	testimony of Martinez does not support
oversaw and generally supervised	statement #105 inasmuch as he testified
the recording and production of	Hyphy was merely "engaged" in
each Album.	production. Martinez Depo. at 86:7, 86:15.
Martinez Decl. at ¶ 6; Begakis Decl. at	00.13.
¶ 8, Exhibit "G" thereto, Martinez Depo	
at 85:14-86:16.	producer, sole author and sole creator of
	the sound recordings of the Albums and therefore possessed all original rights,
	title and interest in the sound recordings
	of the Albums. Chavez Decl., Dkt. 46-2
	at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
	7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey
	Con Mariachi").
	Neither Hyphy nor anyone offiliated with
	Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
	12.jpiij provided dirj original orodivo

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		input into the recording of the Albums,
4		provided any original material for the sound recordings of the Albums or
		exercised any artistic, production or
5		recording control over the Albums.
6		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
7		Rosales Deel., Dkt. 40-1 at       /-10.
8		Chavez never had an agreement or
9		understanding with Hyphy, or anyone else, that it would be deemed a co-author
0		of the Albums. Chavez Decl., Dkt. 46-2
11		at ¶¶ 8-13, 19.
12	106. For the final two (of five)	Disputes. The cited deposition
	Albums (which are comprised of recordings from a previous live	testimony of Martinez does not support statement #106 inasmuch as such
13	performance by the Group), Hyphy	testimony does not relate to the selection
14	also selected and paid for the venue	and payment for any venue.
15	of the live performance.	Moreover, Chavez was the sole
16	Martinez Decl. at ¶ 6; Begakis Decl. at	producer, sole author and sole creator of
17	¶ 8, Exhibit "G" thereto, Martinez Depo	the sound recordings of the Albums and
18	at 75:6-25.	therefore possessed all original rights, title and interest in the sound recordings
19		of the Albums. Chavez Decl., Dkt. 46-2
20		at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
		7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
21		recording of - "Naci Con Suerte de Rey
22		Con Mariachi").
23		Neither Hyphy nor anyone affiliated with
24		Hyphy provided any original creative
25		input into the recording of the Albums,
26		provided any original material for the sound recordings of the Albums or
27		exercised any artistic, production or
$\begin{bmatrix} 27 \\ 28 \end{bmatrix}$		recording control over the Albums.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
4		Chavez never had an agreement or
5		understanding with Hyphy, or anyone
6		else, that it would be deemed a co-author
7		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
8	107. For the final two (of five)	Disputes. The cited deposition
9	Albums (which are comprised of	testimony of Martinez does not support
9	recordings from a previous live	statement #107 inasmuch as such
0	performance by the Group), Hyphy	testimony does not relate to the selection
11	also selected the songs to be	of songs at a live performance.
2	performed at the live performance and recorded for the Albums.	Moreover, Chavez was the sole
	and recorded for the Albums.	producer, sole author and sole creator of
3	Martinez Decl. at ¶ 6; Begakis Decl. at	the sound recordings of the Albums and
4	¶ 8, Exhibit "G" thereto, Martinez Depo	therefore possessed all original rights,
5	at 75:6-25.	title and interest in the sound recordings
		of the Albums. Dkt. 46-2 at ¶¶ 8-21;
.6		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10;
7		Martinez Depo. at 60:5-61:2
8		(disclaiming Hyphy's involvement in the
		recording of - "Naci Con Suerte de Rey Con Mariachi").
9 ∥		Con Martaent j.
0		Neither Hyphy nor anyone affiliated with
$_{1}\parallel$		Hyphy provided any original creative
2		input into the recording of the Albums,
		provided any original material for the
23		sound recordings of the Albums or exercised any artistic, production or
24		recording control over the Albums.
25		Chavez Decl., Dkt. Dkt. 46-2 at ¶¶ 8-13,
$\begin{bmatrix} 5 \\ 6 \end{bmatrix}$		19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
		Chavez never had an agreement or
7		Chavez never had an agreement or understanding with Hyphy, or anyone
8		manifold with Hyprif, of unjoint

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		else, that it would be deemed a co-author
4		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
5	108. For the final two (of five)	Disputes. Chavez was the sole producer,
6	Albums (which are comprised of recordings from a previous live	sole author and sole creator of the sound recordings of the Albums and therefore
7	performance by the Group), Hyphy	possessed all original rights, title and
8	also directly employed, supervised, and directed the services of the	interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
9	sound engineer and videographer	8-21; Martinez Depo. at 60:5-61:2
10	who each recorded the audio and video of the live performance,	(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
11	respectively.	Con Mariachi").
12	Martinez Decl. at ¶ 6; Begakis Decl. at	Neither Hyphy nor anyone affiliated with
13	¶ 8, Exhibit "G" thereto, Martinez Depo	Hyphy provided any original creative
14	at 75:6-25.	input into the recording of the Albums, provided any original material for the
15		sound recordings of the Albums or
16		exercised any artistic, production or recording control over the Albums.
17		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
18		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
19		Chavez never had an agreement or
20		understanding with Hyphy, or anyone else, that it would be deemed a co-author
21		of the Albums. Chavez Decl., Dkt. 46-2
22		at ¶¶ 8-13, 19.
23		Disputes. Statement #108 constitutes a
24		self-serving and unsubstantiated statement, which is also inadmissible
25		because there is no evidence of Hyphy's
26		personal knowledge of the activities of any sound engineer or videographer who
27		recorded any live performances.
28	109. For the final two (of five)	Disputes. Statement #109 constitutes a

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Albums (which are comprised of recordings from a previous live	self-serving and unsubstantiated statement. The cited deposition
4	performance by the Group), Hyphy	testimony of Martinez does not support
5	also wrote a script for the history of	statement #109 inasmuch as such
6	the band as presented at the live performance, and hired a	testimony does not relate to the writing or narration of any script.
	"MC"/commentator who narrated	of narration of any script.
7	the script.	
8	Martina Darl at C. Darahia Darl at	
9	Martinez Decl. at ¶ 6; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
10	at 75:6-25.	
11	110. For the final two (of five) Albums (which are comprised of	Disputes. Statement #110 constitutes a
12	recordings from a previous live	self-serving and unsubstantiated statement, which is also irrelevant to
13	performance by the Group), Hyphy	Hyphy's claims of ownership of the
	also re-recorded whole portions of	recordings. The cited deposition
14	the guitarist's contributions to the	testimony of Martinez does not support
15	live performance afterwards, using a new guitarist selected, hired and	statement #110 inasmuch as such testimony does not relate to the re-
16	paid for by Hyphy.	recording of any guitarist's
17		contributions.
18	Martinez Decl. at ¶ 6; Begakis Decl. at	
	¶ 8, Exhibit "G" thereto, Martinez Depo at 75:6-25.	
19	111. It should be noted here that	Disputes that either Flores or Vargas
20	Flores and Vargas were plainly joint	were joint authors in the Albums, that
21	authors of the Albums, including	they were equally involved in all of Los
22	based on the fact that Flores and Vargas were equally involved in all	Originales De San Juan's activities or that same existed as an unincorporated
23	activities of the Band, which existed	partnership in which all members were
	as an unincorporated partnership in	joint owners, participants and
24	which all Band members were joint	contributors, and any of their related
25	owners, participants and	testimony is self-serving and conclusory.
26	contributors.	Disputes the Albums were created
27	Begakis Decl. at ¶ 13, Exhibit "L"	pursuant to the alleged Agreement. In or
28	thereto, Chavez Depo I at 18:23-19:3;	about 2013, Chavez, and Chavez alone,

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$_{2}\parallel$	and Supporting Evidence:	<b>Supporting Evidence:</b>
3	Begakis Decl. at ¶ 11, Exhibit "J"	entered into an oral distribution
	thereto, Vargas Depo at 27:17-22,	agreement, not an oral recording
4	143:7-10, 143:14-16, 143:17-20,	agreement, with Hyphy. Chavez Decl.,
5	143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "K" thereto, Flores Depo	Dkt. 46-2 at ¶ 7.
6	at 47:15-25, 82:13-15, 82:22-83:2, 83:4-	The testimony cited by Hyphy does not
7	13, 85:25-86:11, 86:13-21.	support statement # 111 inasmuch as neither Flores nor Vargas testifies they
8		were involved in all activities of Los
9		Originales de San Juan, or that they
0		personally provided any original or creative material that was incorporated
11		into the sound recordings of the Albums,
		or provide any description of same.
12		
13		Chavez is Los Originales De San Juan's sole founder, and principal. Chavez
l4		Decl., Dkt. 46-2 at ¶ 3; Defendants'
15		Counterclaim, Dkt. 7 at ¶ 15 (referring to
		Chavez as "the founder and principal");
16		Defendants' First Amended
17		Counterclaim, Dkt. 15 at ¶ 15 (same).
18		Florez and Vargas did not possess any
19		alienable right, title or interest in the
20		Albums. Chavez was the sole producer, sole author and sole creator of the sound
$\begin{bmatrix} 1 \\ 21 \end{bmatrix}$		recordings of the Albums and therefore
$\begin{bmatrix} 21 \\ 22 \end{bmatrix}$		possessed all original rights, title and
23		interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
23 24		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
25		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
$\begin{bmatrix} 25 \\ 26 \end{bmatrix}$		recording of - "Naci Con Suerte de Rey
	112. It should be noted here that	Con Mariachi").  Disputes that either Flores or Vargas
27	Flores and Vargas were plainly joint	were joint authors in the Albums or
$_{28}\parallel$	g y zaminj jemit	J

#### **Hyphy's Undisputed Material Facts Opposing Party's Response and** 1 and Supporting Evidence: **Supporting Evidence:** 2 authors of the Albums, including contributed to their creation, or that they 3 were equally credited on the Albums and based on the fact that Flores and any of their related testimony is self-Vargas were equally credited on all 4 serving and conclusory. Albums in which each of them 5 made contributions. Disputes the Albums were created 6 See Begakis Decl. at ¶ 11, Exhibit "J" pursuant to the alleged Agreement. In or 7 about 2013, Chavez, and Chavez alone, thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, entered into an oral distribution 8 143:25-144:3, 144:4-7; Begakis Decl. at agreement, not an oral recording 9 ¶ 12, Exhibit "K" thereto, Flores Depo agreement, with Hyphy. Chavez Decl., at 47:15-25, 82:13-15, 82:22-83:2, 83:4-Dkt. 46-2 at ¶ 7. 10 The testimony cited by Hyphy does not 13, 85:25-86:11, 86:13-21. 11 support statement # 112 inasmuch as neither Flores nor Vargas testifies they 12 personally provided any original or 13 creative material that was incorporated into the sound recordings of the Albums, 14 or provide any description of same. 15 16 Chavez is Los Originales De San Juan's sole founder, and principal. Chavez 17 Decl., Dkt. 46-2 at ¶ 3; Defendants' 18 Counterclaim, Dkt. 7 at ¶ 15 (referring to Chavez as "the founder and principal"); 19 Defendants' First Amended 20 Counterclaim, Dkt. 15 at ¶ 15 (same). 21 Florez and Vargas did not possess any 22 alienable right, title or interest in the Albums. Chavez was the sole producer, 23 sole author and sole creator of the sound 24 recordings of the Albums and therefore possessed all original rights, title and 25 interest in the sound recordings of the 26 Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-27 10; Martinez Depo. at 60:5-61:2 28

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3 4		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey Con Mariachi").
5 6 7 8 9 10 11 12 13	Flores and Vargas were plainly joint authors of the Albums, including based on the fact that Flores and Vargas shared equally in all profits of the Band, and were granted equal access to inspect all records related to the Band's receipt of all such profits.  Begakis Decl. at ¶ 14, Exhibit "M" thereto, Chavez Depo II at 20:20-21:16, 26:13-20, 31:8-16, 33:18-34:1, 38:8-18,	Disputes that either Flores or Vargas were joint authors in the Albums, or that they shared equally in the profits of Los Originales De San Juan or were granted equal access to inspect records.  Disputes the Albums were created pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone, entered into an oral distribution agreement, not an oral recording agreement, with Hyphy. Chavez Decl., Dkt. 46-2 at ¶ 7.
14   15   16   17   18   19   20   21   22   23   24   25   26   27	41:13-42:2; Begakis Decl. at ¶ 11, Exhibit "J" thereto, Vargas Depo at 27:17-22, 143:7-10, 143:14-16, 143:17-20, 143:25-144:3, 144:4-7; Begakis Decl. at ¶ 12, Exhibit "K" thereto, Flores Depo at 47:15-25, 82:13-15, 82:22-83:2, 83:4-13, 85:25-86:11, 86:13-21.	The Vargas Decl. and the Flores Decl. cited by Hyphy does not support statement # 113 inasmuch as neither declarant states he is a "co-equal" member of Los Originales de San Juan, or state anything else therein that has a similar meaning to the quoted language. They merely state they provided backing musician services by playing their instrument in the creation of the Albums; they do not state that they personally provided any original or creative material that was incorporated into the sound recordings of the Albums, or provide any description of same. <i>See generally</i> Florez Decl.; Vargas Decl.  Chavez is Los Originales De San Juan's sole founder, and principal. Chavez

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Counterclaim, Dkt. 7 at ¶ 15 (referring to
4		Chavez as "the founder and principal"); Defendants' First Amended
5		Counterclaim, Dkt. 15 at ¶ 15 (same).
6		Florez and Vargas did not possess any
7		alienable right, title or interest in the
8		Albums. Chavez was the sole producer, sole author and sole creator of the sound
9		recordings of the Albums and therefore
10		possessed all original rights, title and interest in the sound recordings of the
11		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
12		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
13		(disclaiming Hyphy's involvement in the
14		recording of - "Naci Con Suerte de Rey Con Mariachi").
15		Con mariacni ).
16		The cited deposition testimony of
17		Chavez does not support statement #12 inasmuch as he testified that he paid
18	114 T 1100 - 11 1 1	Vargas and Flores a weekly salary.
19	114. In addition to its original creative contributions to the production,	Disputes. The cited deposition testimony of Martinez, and the
	recording and overall creation of the	interrogatory response referred to
20	Los Originales Albums, Hyphy also designed and created the artwork	therein, does not support statement #114 inasmuch as such testimony states the
21	featured on the cover of each Album	Album Artwork was designed and
22	(the "Album Artwork").	created by Marcelino Mendoza, an independent contractor.
23	Martinez Decl. at ¶ 7; Begakis Decl. at	_
24	¶ 8, Exhibit "G" thereto, Martinez Depo at 127:12-21.	Further disputes to the extent statement #114 claims that Hyphy provided
25	W 127.12 21.	"original creative contributions to the
26		production, recording and overall creation of the Los Originales Albums."
27		Chavez was the sole producer, sole
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		author and sole creator of the sound
4		recordings of the Albums and therefore possessed all original rights, title and
5		interest in the sound recordings of the
		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
6		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
7		involvement in the recording of - "Naci
8		Con Suerte de Rey Con Mariachi").
9		Neither Hyphy nor anyone affiliated with
10		Hyphy provided any original creative
11		input into the recording of the Albums, provided any original material for the
12		sound recordings of the Albums or
13		exercised any artistic, production or
14		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
15		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
16		Chavez never had an agreement or understanding with Hyphy, or anyone
17		else, that it would be deemed a co-author
18		of the Albums. Chavez Decl., Dkt. 46-2
19	115 Hambar malagged the Albarrage verith	at ¶¶ 8-13, 19.
20	115. Hyphy released the Albums, with the Album Artwork, for distribution	Undisputed.
21	through all available digital service	
22	providers (the " <i>DSPs</i> ") between 2013 and 2017.	
23	2013 and 2017.	
	Martinez Decl. at ¶ 8, Exhibit "B"	
24	thereto; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23;	
25	51:18-25; 67:24-69:5.	
26	116. Thereafter, Hyphy obtained	Disputes to the extent that statement
27	copyright registrations for all of such Album Artwork.	#116 implies that the release dates of the
28	Such Album Altwork.	various Albums through DSPs between

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	2013 and 2017 was proximate in time to
Martinez Decl. at ¶ 9, Exhibit "C"	the dates that Hyphy obtained copyright
thereto; Begakis Decl. at ¶ 8, Exhibit	registration for the Album Artwork.
"G" thereto, Martinez Depo at 133:9-	Hyphy obtained all such registration in
136:5.	May 2020. Martinez Depo at 133:9-136:5.
117. Yellowcake is a competing	Disputes. Yellowcake is primarily
record label and distributor of sound	engaged in the business of, among other
recordings, utilizing Colonize as its	things, purchasing, owning, licensing
"distribution arm" to release and	and exploiting intellectual property
exploit rights that Yellowcake	rights. Declaration of Kevin Berger (the
acquires.	"Berger Decl."), Dkt. 82-14 at ¶ 3.
	Colonize is a digital music distributor
Begakis Decl. at ¶ 9, Exhibit "H"	that enters into contracts with numerous
thereto, Deposition Transcript of Kevin	different record labels and performers.
Berger (" <i>Berger Depo</i> ") at 91:19-23;	Declaration of Jose David Hernandez
Begakis Decl. at ¶ 10, Exhibit "I"	(the "Hernandez Decl."), Dkt. 82-16 at
thereto, Deposition Transcript of Jose David Hernandez, Volume I	¶¶ 3-6. Yellowcake and Colonize are two completely separate entities with
("Hernandez Depo I") at 77:19-21.	two different owners.
118. Hernandez is a co-owner of both	Undisputed that Hernandez is an owner
Yellowcake and Colonize.	of Colonize and that he once was an
	owner of Yellowcake.
Begakis Decl. at ¶ 10, Exhibit "I"	
thereto, Hernandez Depo I at 51:9-11,	
116:18-117:14.	
119. In his position as co-owner of	Disputes. The cited deposition
both Yellowcake and Colonize, Hernandez has admitted that both	testimony of Hernandez does not support statement #119 inasmuch as Hernandez
entities have operated – and	testified that Colonize "gets some stuff
continue to operate – as one single	of value" for distributing Yellowcake's
economic entity, with common	music. Hernandez Depo I at 80:13.
ownership, common business	_
operations, common office space,	
common staff, and many other	
common resources.	
Begakis Decl. at ¶ 10, Exhibit "I"	
Degamo Deen at    10, Damoit 1	

	<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
	and Supporting Evidence:	<b>Supporting Evidence:</b>
	thereto, Hernandez Depo I at 80:3-20.	
	120. In or about March 2019,	Disputes. The cited deposition
	Hernandez approached Chavez	testimony of Chavez does not support
	about selling the Los Originales	statement #120 inasmuch as Chavez
	Albums to Yellowcake.	testified he does not remember when
	Begakis Decl. at ¶ 14, Exhibit "M"	Hernandez approached him, but it was in the year 2020 (Chavez Depo I at 78:9-
	thereto, Chavez Depo II at 77:13-17,	25). The cited deposition testimony of
	79:7-9, 79:17-80:2, 81:7-16; Begakis	Hernandez does not support statement
	Decl. at ¶ 10, Exhibit "I" thereto,	#120 inasmuch as Hernandez does not
	Hernandez Depo I at 148:24-149:5.	testify that he approached Chavez, and
		he testifies "it could have been 2018"
		when he first discussed with Chavez
		purchasing the Albums (Hernandez
		Depo I at 148:24-149:5).
		On or about March 21, 2019, Chavez
		sold the entirety of his rights, title and
		interest in the copyrights of the sound
		recordings of the Albums to Yellowcake.
		Chavez Decl., Dkt. 46-2 at ¶¶ 15; Asset
	101 77	Purchase Agreement, Dkt. 83-3.
	121. Hernandez had previously	Disputes. Hernandez never worked for
	worked with Hyphy and had secretly gained valuable information	Hyphy, and statement # 121 is unsubstantiated and self-serving.
	on Hyphy's business and	unsubstantiated and sen-serving.
	relationship with Chavez.	The cited paragraph in the Martinez
	Hernandez therefor knew that	Decl. stating that Hernandez "used to
	Hyphy only had an oral agreement	work with Hyphy" and therefore
	with the Group.	"obtained valuable information
	Mouting Dool at # 2: Das-1: Das1	including the knowledge Hyphy's
	Martinez Decl. at ¶ 3; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	Agreement with the Group was oral" is misleading because Martinez testified
	at 26:2-12.	Hernandez was merely an initial third-
	ut 20.2 12.	party distributer of Hyphy music
		(Martinez Depo. at 26:6-12), and such
		statement is pure speculation as Martinez
ш		also testified that Hyphy's business

Hyphy's Undisputed Material Fac	ts Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
1.0	dealings with Hernandez began and ended in 2010, approximately three years prior to the existence of the alleged oral agreement (Martinez Depo. at 15:10-15, 26:20-23).  Disputes. The cited testimony of Chavez does not refer to any knowledge his backing musicians may or may not have had regarding the alleged conversation. Moreover, Chavez testified that the alleged transaction was a purchase, not an assignment. The cited testimony of Hernandez is unrelated to statement #122.  Further disputes to the extent statement #
9	Amended Counterclaim, Dkt. 15 at ¶¶ 15-17.
	Moreover, Martinez, the person who made the alleged oral agreement on
	behalf of Defendant, further confirmed,
	repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl.,
	that the alleged oral agreement was
	between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt.
	45-1 at ¶¶ 2, 4, 7, 8.
	Defendant confirmed in other of its

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
$\begin{bmatrix} 1 \\ 2 \end{bmatrix}$	and Supporting Evidence:	Supporting Evidence:
$\begin{bmatrix} 2 \\ 3 \end{bmatrix}$	and Supporting Different	filings with the Court that the alleged
		oral agreement was between only Hyphy
4		and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss
5		Hyphy's Counterclaims. Hyphy Opp. To
6		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
7		pg. 1 lns. 16-18.
8		Florez and Vargas did not possess any
9		alienable right, title or interest in the
10		Albums. Chavez was the sole producer, sole author and sole creator of the sound
11		recordings of the Albums and therefore
12		possessed all original rights, title and interest in the sound recordings of the
13		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
14		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
15		(disclaiming Hyphy's involvement in the
16		recording of - "Naci Con Suerte de Rey Con Mariachi").
17		,
18		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
19		input into the recording of the Albums,
20		provided any original material for the sound recordings of the Albums or
21		exercised any artistic, production or
22		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
23		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
24		Chavez never had an agreement or
25		understanding with Hyphy, or anyone
26		else, that it would be deemed a co-author
27		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
28		

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1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	123. Chavez and Yellowcake codified their purported agreement via an	Undisputed Chavez and Yellowcake entered into the Asset Purchase
4	"Asset Purchase and Assignment	Agreement set forth at Dkt. 83-3.
	Agreement" executed on or about	
5	March 21, 2019 (the " <i>Asset</i>	
6	Purchase Agreement').	
7	Begakis Decl. at ¶ 7, Exhibit "F"	
8	thereto, Plaintiff/Counterdefendant's	
	Document Production (PLF000021-	
9	PLF000039).	
10	124. In Section 13.e. of the Asset	Undisputed.
11	Purchase Agreement, Chavez represented and warranted to	
12	Yellowcake that Chavez was "the	
13	only owner of" the Albums, and	
	possessed "good and marketable	
14	title" thereto at the time of sale.	
15	Begakis Decl. at ¶ 7, Exhibit "F"	
16	thereto, Plaintiff/Counterdefendant's	
17	Document Production (PLF00024).	
	125. Chavez, however, never obtained	Disputes statement #125 because it
18	signed written agreements from	incorrectly assumes Flores, Vargas and
19	Flores, Vargas or Hyphy acquiring	Hyphy possessed "respective
20	each party's respective contributions to, and rights in, the	contributions to, and rights in, the Albums and sound recordings embodied
21	Albums and sound recordings	thereon"; which they did not.
	embodied thereon.	·
22	Decele Deal at ¶ 6 Ewkikit "E"	Further disputes to the extent statement #
23	Begakis Decl. at ¶ 6, Exhibit "E" thereto, Yellowcake Interrogatory	125 implies that anyone other than Chavez possessed the right to convey
24	Responses at pp. 4-5; Begakis Decl. at ¶	any right in the Albums. Defendant
25	7, Exhibit "F" thereto, Yellowcake	consistently confirmed in both versions
26	Responses to Request for Production at	of its Counterclaims that the alleged oral
	p. 4.	agreement was between only Hyphy and Chavez Defendant's Counterclaim Dkt
27		Chavez. Defendant's Counterclaim, Dkt. 7 at ¶¶ 15-17; Defendant's First
28		10 1., 2 TIMBUM DI 1100

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Amended Counterclaim, Dkt. 15 at ¶¶
4		15-17.
5		Moreover, Martinez, the person who
6		made the alleged oral agreement on behalf of Defendant, further confirmed,
7		repeatedly, under penalty of perjury, in
8		the August 2021 Martinez Reply Decl., that the alleged oral agreement was
9		between only Hyphy and Chavez.
		August 2021 Martinez Reply Decl., Dkt.
10		45-1 at $\P\P$ 2, 4, 7, 8.
11		Defendant confirmed in other of its
12		filings with the Court that the alleged oral agreement was between only Hyphy
13		and Chavez. Hyphy's Opposition to
14		Yellowcake's Motion to Dismiss
15		Hyphy's Counterclaims. Hyphy Opp. To MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.
16		5; August 2021 Hyphy Reply, Dkt. 45 at
17		pg. 1 lns. 16-18.
18		Florez and Vargas did not possess any
19		alienable right, title or interest in the
20		Albums. Chavez was the sole producer, sole author and sole creator of the sound
21		recordings of the Albums and therefore
22		possessed all original rights, title and interest in the sound recordings of the
23		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
24		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
25		Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the recording of - "Naci"
		Con Suerte de Rey Con Mariachi").
26		Neither Hyphy nor anyone affiliated with
27		Hyphy provided any original creative
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	<b>Supporting Evidence:</b>
3		input into the recording of the Albums, provided any original material for the
4		sound recordings of the Albums or
5		exercised any artistic, production or recording control over the Albums.
6		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
7		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
8		Chavez never had an agreement or
9		understanding with Hyphy, or anyone else, that it would be deemed a co-author
10		of the Albums. Chavez Decl., Dkt. 46-2
11		at ¶¶ 8-13, 19.

# II. SUMMARY ADJUDICATION IS PROPER AS FOR THE SECOND AND SIXTH COUNTERCLAIMS OF THE COUNTERCLAIM

A. <u>Summary Adjudication Is Proper As To Hyphy's Second</u>

<u>Counterclaim For Copyright Infringement Because Yellowcake</u>

<u>And Colonize Infringed Upon Hyphy's Album Artwork</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
126. Defendant/Counterclaimant HYPHY MUSIC, INC. ("Hyphy") is a record label in the business of collaborating with recording artists to produce, distribute, and otherwise exploit sound and audiovisual recordings, coupled with artwork.	Undisputed.
Declaration of John Begakis ("Begakis Decl.") at ¶ 8, Exhibit "G" thereto, Jose Martinez Deposition Transcript ("Martinez Depo") at 13:6-14:6.	

#### **Hyphy's Undisputed Material Facts Opposing Party's Response and** 1 and Supporting Evidence: **Supporting Evidence:** 2 Undisputed that Chavez is the lead 127. Counter-Defendant JESUS 3 CHAVEZ, SR ("Chavez") is the singer when he performs with his lead singer of the Spanish-language backing band, Los Originales De San 4 musical group Los Originales De Juan, and he recorded the six albums that 5 San Juan (the "Group"). is the subject of this action, titled: (i) Los Originales de San Juan- "El 6 Begakis Decl. at ¶ 13, Exhibit "L" Campesino"; (ii) Los Originales de San 7 thereto, Jesus Chavez, Sr. Deposition, Juan-"Corridos de Poca M"; (iii) Los Volume I ("Chavez Depo I") at 25:13-Originales de San Juan-"En Vivo Desde 8 14; Begakis Decl. at ¶ 14, Exhibit "M" La Cantina de Mi Barrio"; (iv) Los 9 thereto, Jesus Chavez, Sr. Deposition, Originales de San Juan-"Nuestra Volume II ("Chavez Depo II") at Historia En Vivo"; (v) Los Originales de 10 San Juan- "Amigos y Contrarios"; and 16:22-17:5. 11 (vi) Los Originales de San Juan-"Naci Con Suerte de Rey Con Mariachi" 12 (collectively "Albums"). 13 14 Disputes to the extent it implies lead singer was Chavez's only role in Los 15 Originales De San Juan. Chavez is Los 16 Originales De San Juan's sole founder, and principal. Chavez Decl., Dkt. 46-2 17 at ¶ 3; Defendants' Counterclaim, Dkt. 7 18 at ¶ 15 (referring to Chavez as "the founder and principal"); Defendants' 19 First Amended Counterclaim, Dkt. 15 at 20 ¶ 15 (same). 21 Chavez was the sole producer, sole author and sole creator of the sound 22 recordings of the Albums and therefore 23 possessed all original rights, title and 24 interest in the sound recordings of the Albums. Declaration of Jesus Chavez, 25 Sr. (the "Chavez Decl."), Dkt. 46-2 at ¶¶ 26 8-21; Declaration of Hector Rosales (the "Rosales Decl."), Dkt. 46-1 at ¶¶ 7-10; 27 Martinez Depo. at 60:5-61:2 28

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	(disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey Con Mariachi").
128. The Group operates as a co-equal	Undisputed Flores formerly played the
partnership comprised of Chavez	accordion, and that Vargas formerly
and fellow band members Domingo	played the drums at times for Chavez
Torres Flores (" <i>Flores</i> "), who plays	when Chavez performed with his
the accordion, and Alfonso Vargas (" <i>Vargas</i> "), who plays the drums.	backing band, Los Originales De San Juan.
( vurgus ), who plays the drums.	Juan.
Begakis Decl. at ¶ 13, Exhibit "L"	Disputes that either Flores or Vargas
thereto, Chavez Depo I at 18:16-19:3,	were co-equal partners in Los Originales
20:8-16, 21:16-19; Begakis Decl. at ¶	De San Juan. Chavez was the sole
11, Exhibit "J" thereto, Deposition Transcript of Alfonso Vargas ("Vargas	producer, sole author and sole creator of the sound recordings of the Albums and
<b>Depo</b> ") at 17:16-19; 27:17-22; 143:14-	therefore possessed all original rights,
16; Begakis Decl. at ¶ 12, Exhibit "K"	title and interest in the sound recordings
thereto, Deposition Transcript of	of the Albums. Chavez Decl., Dkt. 46-2
Domingo Torres Flores ("Flores Depo") at 47:15-25, 48:19-23.	at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2
<b>Depo</b> ) at 47.13-23, 40.19-23.	(disclaiming Hyphy's involvement in the
	recording of - "Naci Con Suerte de Rey
	Con Mariachi").
129. In or about February 2013,	Disputes the Albums were created
Hyphy and the Group began working together to co-create	pursuant to the alleged Agreement. In or about 2013, Chavez, and Chavez alone,
various sound recordings to be	entered into an oral distribution
embodied on multiple albums,	agreement, not an oral recording
which they orally agreed were to be	agreement, with Hyphy. Chavez Decl.,
owned by Hyphy (the " <i>Agreement</i> ").	Dkt. 46-2 at ¶ 7.
Agreement ).	The cited deposition testimony of
Declaration of Jose Martinez	Chavez does not support statement #129
("Martinez Decl.") at $\P$ 3; Decl. at $\P$ 13,	inasmuch as Chavez's testimony that an
Exhibit "L" thereto, Chavez Depo I at	Album was recorded "with Hyphy"
34:7-11; Decl. at ¶ 14, Exhibit "M" thereto, Chavez Depo II at 19:14-17,	refers to such Album as being part of the distribution agreement between Chavez
32:16-20, 35:12-21.	and Hyphy.
·	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Defendant consistently confirmed in
4		Defendant consistently confirmed in both versions of its Counterclaims that
5		the alleged oral agreement was between only Hyphy and Chavez. Defendant's
6		Counterclaim, Dkt. 7 at ¶¶ 15-17;
7		Defendant's First Amended Counterclaim, Dkt. 15 at ¶¶ 15 17
8		Counterclaim, Dkt. 15 at ¶¶ 15-17.
9		Moreover, Martinez, the person who
10		made the alleged oral agreement on behalf of Defendant, further confirmed,
11		repeatedly, under penalty of perjury, in
12		his Declaration in support of Reply to Counter-Defendants' Challenge to the
13		Validity of Certain Copyright
14		Registrations (the "August 2021 Martinez Reply Decl."), that the alleged
15		oral agreement was between only Hyphy
16		and Chavez. August 2021 Martinez Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
17		
18		Defendant confirmed in other of its filings with the Court that the alleged
19		oral agreement was between only Hyphy
20		and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss
21		Hyphy's Counterclaims (the "Hyphy
22		Opp. To MTD"), Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; Hyphy's Reply to
23		Counterdefendants' Challenge to the
24		Validity of Certain Copyright Registrations (the "August 2021 Hyphy
25		Reply"), Dkt. 45 at pg. 1 lns. 16-18.
26		Florez and Vargas did not possess any
27		alienable right, title or interest in the
28		Albums. Chavez was the sole producer,

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		sole author and sole creator of the sound
		recordings of the Albums and therefore
4		possessed all original rights, title and interest in the sound recordings of the
5		Albums. Chavez Decl., Dkt. 46-2 at ¶¶
6		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
7		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
8		recording of -"Naci Con Suerte de Rey
9		Con Mariachi").
10		Neither Hyphy nor anyone affiliated with
11		Hyphy provided any original creative
12		input into the recording of the Albums, provided any original material for the
13		sound recordings of the Albums or
		exercised any artistic, production or
14		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
15		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
16		
17		Chavez never had an agreement or understanding with Hyphy, or anyone
18		else, that it would be deemed a co-author
19		of the Albums. Chavez Decl., Dkt. 46-2
20	130. The albums created pursuant to	at ¶¶ 8-13, 19. Disputes. Six, not five, albums are the
21	the Agreement were entitled (1)	subject of Yellowcake's claims, i.e., the
22	"Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El	six "Albums" identified in Yellowcake's response #2 above. Further disputes the
23	Campesino"; (4) "Desde La Cantina	Albums were created pursuant to the
24	de Mi Barrio (En Vivo)"; and (5)	alleged Agreement. In or about 2013,
	"Nuestra Historia (En Vivo)" (collectively, the " <i>Los Originales</i>	Chavez, and Chavez alone, entered into an oral distribution agreement, not an
25	Albums" or "Albums").	oral recording agreement, with Hyphy.
26	M ( D 1 (MAD 1 D 1 )	Chavez Decl., Dkt. 46-2 at ¶ 7.
27	Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	Defendant consistently confirmed in
28	, c, Emilier S dierete, Martinez Depo	2 Tollowin Colloistening Collinilled in

and Supporting Evidence:  at 44:7-23, 51:22-25.  both versions of its Counterclaims that the alleged oral agreement was between only Hyphy and Chavez. Defendant's Counterclaim, Dkt. 7 at ¶ 15-17; Defendant's First Amended Counterclaim, Dkt. 15 at ¶ 15-17.  Moreover, Martinez, the person who made the alleged oral agreement on behalf of Defendant, further confirmed, repeatedly, under penalty of perjury, in the August 2021 Martinez Reply Decl., that the alleged oral agreement was between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt. 45-1 at ¶ 2, 4, 7, 8.  Defendant confirmed in other of its filings with the Court that the alleged oral agreement was between only Hyphy and Chavez. Hyphy's Opposition to Yellowcake's Motion to Dismiss Hyphy's Counterclaims. Hyphy Opp. To MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at pg. 1 lns. 16-18.  Florez and Vargas did not possess any alienable right, title or interest in the Albums. Chavez was the sole producer, sole author and sole creator of the sound recordings of the Albums and therefore possessed all original rights, title and interest in the sound recordings of the Albums. Dkt. 46-2 at ¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶ 7-10; Martinez	1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
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			Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
1 Deno. at 60:5-61:2 (disclaiming Hyphy's 1			Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
27 Depo. at 60:3-61:2 (disclaiming Hypny's involvement in the recording of - "Naci			

$_{1}\parallel$	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Con Suerte de Rey Con Mariachi").
4		Neither Hyphy nor anyone affiliated with
5		Hyphy provided any original creative
		input into the recording of the Albums,
6		provided any original material for the sound recordings of the Albums or
7		exercised any artistic, production or
8		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
9		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
10		
11		Chavez never had an agreement or understanding with Hyphy, or anyone
12		else, that it would be deemed a co-author
13		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
14	131. One of the other two albums	Undisputed.
15	identified in Yellowcake's	-
16	Complaint, entitled "Chuy Chavez y Sus Amigos," has no connection to	
17	this dispute and wasn't even	
18	recorded by Chavez.	
19	Martinez Decl. at ¶ 4; Begakis Decl. at	
20	¶ 8, Exhibit "G" thereto, Martinez Depo	
	at 44:24:-9, 154:11-155:25.  132. In addition to its original creative	Disputes. The cited deposition
21	contributions to the production,	testimony of Martinez, and the
22	recording and overall creation of the Los Originales Albums, Hyphy also	interrogatory response referred to therein, does not support statement #132
23	designed and created the artwork	inasmuch as such testimony states the
24	featured on the cover of each Album	Album Artwork was designed and
25	(the "Album Artwork").	created by Marcelino Mendoza, an independent contractor.
26	Martinez Decl. at ¶ 7; Begakis Decl. at	matpondent continuous.
27	¶ 8, Exhibit "G" thereto, Martinez Depo	Further disputes to the extent statement
28	at 127:12-21.	#132 claims that Hyphy provided

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		"original creative contributions to the
4		production, recording and overall creation of the Los Originales Albums."
5		Chavez was the sole producer, sole
6		author and sole creator of the sound recordings of the Albums and therefore
7		possessed all original rights, title and
8		interest in the sound recordings of the
		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez
9		Depo. at 60:5-61:2 (disclaiming Hyphy's
10		involvement in the recording of - "Naci Con Suerte de Rey Con Mariachi").
11		
12		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
13		input into the recording of the Albums,
14		provided any original material for the sound recordings of the Albums or
15		exercised any artistic, production or
16		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
17		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
18		Chavez never had an agreement or
19		understanding with Hyphy, or anyone
20		else, that it would be deemed a co-author
21		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
22	133. Hyphy released the Albums, with	Undisputed.
23	the Album Artwork, for distribution through all available digital service	
24	providers (the " <b>DSPs</b> ") between	
25	2013 and 2017.	
26	Martinez Decl. at ¶ 8, Exhibit "B"	
27	thereto; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo at 44:7-23;	
28	G thereto, Martinez Depo at 44.7-23,	I.

,	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1		
2	and Supporting Evidence:	Supporting Evidence:
3	51:18-25; 67:24-69:5.	D' 4 4 1 4 4 1 4 4 4 4 4 4 4 4 4 4 4 4 4
4	134. Thereafter, Hyphy obtained copyright registrations for all of	Disputes to the extent that statement #134 implies that the release dates of the
5	such Album Artwork.	various Albums through DSPs between 2013 and 2017 was proximate in time to
6	Martinez Decl. at ¶ 9, Exhibit "C"	the dates that Hyphy obtained copyright
	thereto; Begakis Decl. at ¶ 8, Exhibit	registration for the Album Artwork.
7	"G" thereto, Martinez Depo at 133:9-	Hyphy obtained all such registration in
8	136:5.	May 2020. Martinez Depo at 133:9-136:5.
9	135. Yellowcake is a competing	Disputes. Yellowcake is primarily
0	record label and distributor of sound	engaged in the business of, among other
$1 \parallel$	recordings, utilizing Colonize as its	things, purchasing, owning, licensing
	"distribution arm" to release and	and exploiting intellectual property
2	exploit rights that Yellowcake	rights. Declaration of Kevin Berger (the
3	acquires.	"Berger Decl."), Dkt. 82-14 at ¶ 3.
		Colonize is a digital music distributor
14	Begakis Decl. at ¶ 9, Exhibit "H"	that enters into contracts with numerous
15	thereto, Deposition Transcript of Kevin	different record labels and performers.
	Berger (" <i>Berger Depo</i> ") at 91:19-23;	Declaration of Jose David Hernandez
6	Begakis Decl. at ¶ 10, Exhibit "I"	(the "Hernandez Decl."), Dkt. 82-16 at
17	thereto, Deposition Transcript of Jose	¶¶ 3-6. Yellowcake and Colonize are
	David Hernandez, Volume I	two completely separate entities with
8	("Hernandez Depo I") at 77:19-21.	two different owners
9	136. Hernandez is a co-owner of both Yellowcake and Colonize.	Undisputed that Hernandez is an owner of Colonize and that he once was an
20		owner of Yellowcake.
$_{21}\parallel$	Begakis Decl. at ¶ 10, Exhibit "I"	
22	thereto, Hernandez Depo I at 51:9-11, 116:18-117:14.	
23	137. In his position as co-owner of	Disputes. The cited deposition
	both Yellowcake and Colonize,	testimony of Hernandez does not support
24	Hernandez has admitted that both	statement #137 inasmuch as Hernandez
25	entities have operated – and	testified that Colonize "gets some stuff
26	continue to operate – as one single	of value" for distributing Yellowcake's
	economic entity, with common	music. Hernandez Depo I at 80:13.
27	ownership, common business	
$_{28}$	operations, common office space,	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	common staff, and many other	
4	common resources.	
	Begakis Decl. at ¶ 10, Exhibit "I"	
5	thereto, Hernandez Depo I at 80:3-20.	
6	138. In or about March 2019,	Disputes. The cited deposition
7	Hernandez approached Chavez about selling the Los Originales	testimony of Chavez does not support statement #138 inasmuch as Chavez
8	Albums to Yellowcake.	testified he does not remember when
9		Hernandez approached him, but it was in
10	Begakis Decl. at ¶ 14, Exhibit "M"	the year 2020 (Chavez Depo I at 78:9-
	thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 81:7-16; Begakis	25). The cited deposition testimony of Hernandez does not support statement
11	Decl. at ¶ 10, Exhibit "I" thereto,	#138 inasmuch as Hernandez does not
12	Hernandez Depo I at 148:24-149:5.	testify that he approached Chavez, and
13		he testifies "it could have been 2018" when he first discussed with Chavez
14		purchasing the Albums (Hernandez
15		Depo I at 148:24-149:5).
16		On an about March 21, 2010, Chayar
		On or about March 21, 2019, Chavez sold the entirety of his rights, title and
17		interest in the copyrights of the sound
18		recordings of the Albums to Yellowcake.
19		Chavez Decl., Dkt. 46-2 at ¶¶ 15; Asset Purchase Agreement, Dkt. 83-3.
20	139. Hernandez had previously	Disputes. Hernandez never worked for
21	worked with Hyphy and had	Hyphy, and statement # 139 is
22	secretly gained valuable information on Hyphy's business and	unsubstantiated and self-serving.
23	relationship with Chavez.	The cited paragraph in the Martinez
	Hernandez therefor knew that	Decl. stating that Hernandez "used to
24	Hyphy only had an oral agreement	work with Hyphy" and therefore
25	with the Group.	"obtained valuable information including the knowledge Hyphy's
26	Martinez Decl. at ¶ 3; Begakis Decl. at	Agreement with the Group was oral" is
27	¶ 8, Exhibit "G" thereto, Martinez Depo	misleading because Martinez testified
28	at 26:2-12.	Hernandez was merely an initial third-

1	<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		party distributer of Hyphy music
4		(Martinez Depo. at 26:6-12), and such statement is pure speculation as Martinez
		also testified that Hyphy's business
5		dealings with Hernandez began and
6		ended in 2010, approximately three years
7		prior to the existence of the alleged oral
8		agreement (Martinez Depo. at 15:10-15, 26:20-23).
9	140. Hernandez approached and	Disputes. The cited testimony of Chavez
10	convinced Chavez, without Hyphy	does not refer to any knowledge his
	or the rest of the Group's knowledge, to assign the Albums to	backing musicians may or may not have had regarding the alleged conversation.
1	Yellowcake in exchange for	Moreover, Chavez testified that the
2	payment of \$500,000.	alleged transaction was a purchase, not
13		an assignment. The cited testimony of
14	Begakis Decl. at ¶ 14, Exhibit "M"	Hernandez is unrelated to statement
	thereto, Chavez Depo II at 77:13-17, 79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	#140.
.5	Begakis Decl. at ¶ 10, Exhibit "I"	Further disputes to the extent statement #
6	thereto, Hernandez Depo I at 107:4-20.	140 implies that anyone other than
7		Chavez possessed the right to convey
.8		any right in the Albums. Defendant
		consistently confirmed in both versions of its Counterclaims that the alleged oral
9		agreement was between only Hyphy and
0		Chavez. Defendant's Counterclaim, Dkt.
$1 \parallel$		17 at ¶¶ 15-17; Defendant's First
$_{22}$		Amended Counterclaim, Dkt. 15 at ¶¶
		15-17.
3		Moreover, Martinez, the person who
24		made the alleged oral agreement on
25		behalf of Defendant, further confirmed,
26		repeatedly, under penalty of perjury, in
		the August 2021 Martinez Reply Decl., that the alleged oral agreement was
7		between only Hyphy and Chavez.
28		, , , ,

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		August 2021 Martinez Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
4		
5		Defendant confirmed in other of its filings with the Court that the alleged
6 7		oral agreement was between only Hyphy and Chavez. Hyphy's Opposition to
8		Yellowcake's Motion to Dismiss Hyphy's Counterclaims. Hyphy Opp. To
9		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
10		pg. 1 lns. 16-18.
11		Florez and Vargas did not negges any
12		Florez and Vargas did not possess any alienable right, title or interest in the
13		Albums. Chavez was the sole producer,
14		sole author and sole creator of the sound recordings of the Albums and therefore
15		possessed all original rights, title and
16		interest in the sound recordings of the
		Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
17		10; Martinez Depo. at 60:5-61:2
18		(disclaiming Hyphy's involvement in the recording of - "Naci Con Suerte de Rey
19		Con Mariachi").
20		NI '-1
21		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
22		input into the recording of the Albums,
23		provided any original material for the
24		sound recordings of the Albums or exercised any artistic, production or
25		recording control over the Albums.
26		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
27		1005a105 Deci., DRt. 70-1 at       1-10.
28		Chavez never had an agreement or

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	understanding with Hyphy, or anyone
	else, that it would be deemed a co-author of the Albums. Chavez Decl., Dkt. 46-2
	at ¶ 8-13, 19.
141. Chavez and Yellowcake codified	Undisputed Chavez and Yellowcake
their purported agreement via an	entered into the Asset Purchase
"Asset Purchase and Assignment	Agreement set forth at Dkt. 83-3.
Agreement" executed on or about March 21, 2019 (the "Asset"	
Purchase Agreement').	
- · · · · · · · · · · · · · · · · · · ·	
Begakis Decl. at ¶ 7, Exhibit "F"	
thereto, Plaintiff/Counterdefendant's Document Production (PLF000021-	
PLF000039).	
142. Hyphy distributed the Albums	Disputes because on or about March 21,
with the Album Artwork during all	2019, Chavez sold the entirety of his
times in which Hyphy believed it	rights, title and interest in the copyrights of the sound recordings of the Albums to
possessed the exclusive right to distribute the Albums.	Yellowcake; at that point in time Hyphy
	lost whatever rights it may have had to
Martinez Decl. at ¶ 8, Exhibit "B"	distribute the Albums. Chavez Decl.,
thereto; Begakis Decl. at ¶ 8, Exhibit	Dkt. 46-2 at ¶¶ 14-15; Asset Purchase
"G" thereto, Martinez Depo at 67:24-68:24.	Agreement, Dkt. 83-3.
143. Counter-Defendants engaged in	Disputed. Neither Yellowcake, nor
the unauthorized distribution of	Colonize nor Hernandez has ever used
their own, pirated version of the	the Album Artwork. Berger Decl. at ¶¶
Albums with such Album Artwork.	25-33; Dkt. 82-16, Hernandez Decl. at ¶ 10-19.
Martinez Decl. at ¶ 12, Exhibit "D"	
thereto.  144. When first distributed by Hyphy,	Disputes. Katz's opinion is
each Album was assigned a unique	inadmissible. His opinion constitutes an
International Standard Recording	unsubstantiated legal conclusion and
Code ("ISRC") and Universal	unsubstantiated opinion. Katz is neither
Product Code (" <i>UPC</i> ").	qualified as an expert nor does his reporcomply with Federal Rule of Civil

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Begakis Decl. at ¶ 15, Exhibit "N"	Procedure 26(a)(2) nor is his report
4	thereto, Deposition Transcript of Lawrence H. Katz, Esq. (" <i>Katz Depo</i> ")	admissible under Federal Rule of Evidence 702. Katz is delinquent in his
5	at 68:8-18.	attorney registration with New York.
6		Katz Depo. 14:4-15:4. His expert report did not include exhibits reflecting the
7		results of his research. <i>See id.</i> at 72:11-73:2. He did not cite to any specific
8		documents or testimony in his report.
9		See, e.g., id. at 89:6-10. He did not use
10		any particular methodology to reach his conclusions. <i>See. e.g., id.</i> at 93:3-10. He
11		is not familiar with the concept of scientific peer review. <i>See id.</i> at 94:3-5.
12		He wrote the report "pretty much off the
13		top of [his] head." See id. at 95:13-96:3.
14		He did not cite to any third party sources in his report. <i>See id.</i> at 96:5-17. He did
15		not know why it would be relevant to
16		this action if Yellowcake or Colonize had changed the Albums' ISRC Codes.
17		See id. at 96:18-97:15.
18		Moreover, the cited deposition testimony
19		of Katz does not support statement #144
20		inasmuch as Katz specifically testified he has no personal knowledge of whether
21		each Album was assigned an ISRC or
22		UPC when it was first distributed, or if any such codes were procured by Hyphy
23		or The Orchard. Katz Depo. at 68:2-
24	145. It is standard for a new sound	69:1, 69:22-70:7. Disputes for the same reasons and
25	recording placed into the stream of	objections set forth in the first paragraph
26	distribution to be assigned a unique ISRC and UPC.	of Yellowcake's response to statement # 144.
27		
28	Begakis Decl. at ¶ 15, Exhibit "N"	Moreover, the cited deposition testimony

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	thereto, Katz Depo at 46:1-47:4.	of Katz does not support statement #145
		inasmuch as Katz admitted he lacks
4		personal knowledge of how ISRCs are assigned or if they are unique; he
5		testified that "many years ago" he called the isrc.net company and that is what
7		was explained to him (Katz Depo. at
8		46:21-47:4), and his understanding is that UPCs serve a similar purpose (Katz
9		depo at 47:15-18).
10		The cited deposition testimony of Katz
11		also does not support statement #145 inasmuch as Katz admitted that ISRCs
12		are not necessarily unique to a sound
13		recording because digital service providers may "accept a new ISRC code
14		from a new owner of a sound recording
15		that is different from the previous ISRC code" (Katz Depo 63:12-64:5), and that
16		ISRC assigned to a sound recording can
17	146. ISRCs and UPCs are sometimes	change (Katz Depo. 165:18-22). Disputes for the same reasons and
18	referred to as "digital social security	objections set forth in the first paragraph
19	numbers" for products, and are used to track data regarding the	of Yellowcake's response to statement # 144.
20	distribution and exploitation of each	
21	respective Albums, and the sound	Moreover, the cited deposition testimony
22	recordings thereon.	of Katz does not support statement #146 inasmuch as Katz admitted he lacks
23	Begakis Decl. at ¶ 15, Exhibit "N"	personal knowledge of how ISRCs are
24	thereto, Katz Depo at 46:1-47:4, 46:23-47:4, 47:5-18.	assigned or if they are unique; he testified that "many years ago" he called
25	,	the isrc.net company and that is what
26		was explained to him (Katz Depo. at 46:21-47:4). Katz did not testify that
27		UPCs are referred to as "digital social
28		security numbers."

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
	and Supporting Evidence:	Supporting Evidence:
		The cited deposition testimony of Katz
		also does not support statement #146
		inasmuch as Katz admitted that ISRCs are not necessarily unique to a sound
		recording because digital service
		providers may "accept a new ISRC code
		from a new owner of a sound recording that is different from the previous ISRC
		code" (Katz Depo 63:12-64:5), and that
		ISRC assigned to a sound recording can
	147. Because ISRCs and UPCs are	change (Katz Depo. 165:18-22). Disputes for the same reasons and
	used to track data regarding each	objections set forth in the first paragraph
	Album, and all sound recordings contained thereon, such codes	of Yellowcake's response to statement # 144.
	should not have ever been	177.
	duplicated.	Moreover, the cited deposition testimony
	Begakis Decl. at ¶ 15, Exhibit "N"	of Katz does not support statement #147 inasmuch as Katz admitted he lacks
	thereto, Katz Depo at 48:23-49:14.	personal knowledge of how ISRCs and
		UPCs were assigned to the Albums
		(Katz Depo. at 68:2-69:1, 69:22-70:7) and he does not testify that "ISRCs and
		UPCs are used to track data regarding
	148. Yellowcake should have	each Album."  Disputes for the same reasons and
	requested that Hyphy transfer	objections set forth in the first paragraph
	Albums and their assigned ISRCs	of Yellowcake's response to statement #
	and UPCs to Yellowcake, in the event Yellowcake actually acquired	144.
	the Albums lawfully.	Moreover, the cited deposition testimony
	Begakis Decl. at ¶ 15, Exhibit "N"	of Katz does not support statement #148 inasmuch as such testimony constitutes
	thereto, Katz Depo at 74:1-22.	Katz's personal speculation and
	_	conclusions as to Yellowcake's and
		Colonize's knowledge and motives; and moreover such testimony does not
ا		moreover such testimony does not

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		reference the lawfulness of Yellowcake's
	140 Wallarranka i guana di astablisha d	acquisition of the Albums.
4	149. Yellowcake ignored established industry norms governing how the	Disputes for the same reasons and objections set forth in the first paragraph
5	Albums should have been	of Yellowcake's response to statement #
6	transferred, and instead simply re-	144.
7	released unauthorized duplicate	M
8	(i.e., pirated) versions with the Album Artwork, and with newly	Moreover, neither Yellowcake, nor Colonize nor Hernandez has ever used
	assigned ISRC and UPCs.	the Album Artwork. Berger Decl. at ¶¶
9		25-33; Dkt. 82-16, Hernandez Decl. at ¶¶
10	Martinez Decl. at ¶ 11; Begakis Decl. at	10-19.
11	¶ 15, Exhibit "N" thereto, Katz Depo at 70:23-71:9, 74:1-22, 74:23-75:17.	Moreover, the cited deposition testimony
12	70.23-71.7, 74.1-22, 74.23-73.17.	of Katz does not support statement #149
13		inasmuch as Katz specifically testified he
		has no personal knowledge of whether
14		each Album was assigned an ISRC or UPC when it was first distributed, or if
15		any such codes were procured by Hyphy
16		or The Orchard, and he makes no
17		reference to the Album Artwork
18		whatsoever. Katz Depo. at 68:2-69:1, 69:22-70:7.
	150. Although Counter-Defendants	Disputed. Yellowcake created its own
19	later attempted to scrub the internet	new Album covers after acquiring the
20	of their initial, infringing	sound recordings of the Albums and
21	distribution of the Albums, Hyphy	never used, uploaded or distributed
22	obtained proof of such distribution via one of the DSPs located at	Hyphy's artwork to anyone; Neither Colonize nor Yellowcake has ever had
23	<a href="mailto:squares"><daddykoolrecords.com>.</daddykoolrecords.com></a>	Daddy Kool Records as an account or
		client or sold any sound recordings to it;
24	Martinez Decl. at ¶ 12, Exhibit "D"	and the Daddy Kool Records website
25	thereto.	screenshots relied on by Hyphy do not mention or identify either Yellowcake or
26		Colonize in any way. Berger Decl., Dkt.
27		82-14 at ¶¶ 26-29; Hernandez Decl., Dkt.
28		82-16 at ¶¶ 11-14. Moreover,

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Yellowcake and Colonize conducted an investigation of the alleged infringement
4		of Hyphy's Album Artwork and
5		discovered that in fact it was Hyphy, in
		corroboration with Morena Music, Inc.
6		doing business as Long Play Music, Inc., who uploaded the albums to Daddy Kool
7		Records (thus Hyphy's accusations of
8		infringement are knowingly false).
9		Berger Decl., Dkt. 82-14 at ¶ 30;
10		Hernandez Decl., Dkt. 82-16 at ¶ 15.
		Daddy Kool Records received the Albums with the Album Artwork from
11		Morena, through Hyphy and Morena's
12		distributor, The Orchard, which is a fact
13		that is confirmed in an email chain
14		between Colonize and one of Daddy  Kool Boografs' digital digi
		Kool Records' digital distributors, Audible Magic, who acknowledged that
15		it had acquired the Albums with the
16		Album Artwork from The Orchard, who
17		in turn had received them from Morena
18		d/b/a Long Play Music and uploaded
		them to Daddy Kool Records. Berger Decl., Dkt. 82-14 at ¶ 31; Hernandez
19		Decl., Dkt. 82-16 at ¶¶ 16-17 and Exhibit
20		"A" thereto.
21		Moreover, the cited paragraph in the
22		Martinez Decl. constitutes nothing more
23		than self-serving hearsay.
24	151. With respect to the Album	Disputed. Yellowcake created its own
	entitled "Corridos de Poca M",	new Album covers after acquiring the
25	Hyphy's originally assigned UPC Code is 889176663055.	sound recordings of the Albums and never used, uploaded or distributed
26	Yellowcake's later-acquired UPC	Hyphy's artwork to anyone; Neither
27	Code is 758381471406. Yellowcake	Colonize nor Yellowcake has ever had
28	distributed this Album with	Daddy Kool Records as an account or
20		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Hyphy's Album Artwork, as	client or sold any sound recordings to it;
	confirmed by the display of such	and the Daddy Kool Records website
4	Album with Hyphy's Album	screenshots relied on by Hyphy do not
5	Artwork and Yellowcake's later- acquired UPC Code offered for	mention or identify either Yellowcake or Colonize in any way. Berger Decl., Dkt.
6	download on	82-14 at ¶¶ 26-29; Hernandez Decl., Dkt.
7	<daddykoolrecords.com>.</daddykoolrecords.com>	82-16 at ¶¶ 11-14. Moreover,
		Yellowcake and Colonize conducted an
8	Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	investigation of the alleged infringement
9	and "D" thereto.	of Hyphy's Album Artwork and
10		discovered that in fact it was Hyphy, in corroboration with Morena Music, Inc.
11		doing business as Long Play Music, Inc., who uploaded the albums to Daddy Kool
12		Records (thus Hyphy's accusations of
		infringement are knowingly false).
13		Berger Decl., Dkt. 82-14 at ¶ 30;
14		Hernandez Decl., Dkt. 82-16 at ¶ 15.
15		Daddy Kool Records received the
		Albums with the Album Artwork from
16		Morena, through Hyphy and Morena's
17		distributor, The Orchard, which is a fact that is confirmed in an email chain
18		between Colonize and one of Daddy
19		Kool Records' digital distributors,
20		Audible Magic, who acknowledged that it had acquired the Albums with the
		Album Artwork from The Orchard, who
21		in turn had received them from Morena
22		d/b/a Long Play Music and uploaded
23		them to Daddy Kool Records. Berger Decl., Dkt. 82-14 at ¶ 31; Hernandez
24		Decl., Dkt. 82-14 at    31, Hernandez
25		"A" thereto.
	152. With respect to the Album	Disputed. Yellowcake created its own
26	entitled "El Campesino", Hyphy's	new Album covers after acquiring the
27	originally assigned UPC Code is	sound recordings of the Albums and
28	190374798310. Yellowcake's later-	never used, uploaded or distributed
-0		

	Hyphy's Undisputed Material Facts	Opposing Party's Response and
1		
2	and Supporting Evidence:	Supporting Evidence:
3	acquired UPC Code is	Hyphy's artwork to anyone; Neither
4	758381471420. Yellowcake distributed this Album with	Colonize nor Yellowcake has ever had
4	Hyphy's Album Artwork, as	Daddy Kool Records as an account or client or sold any sound recordings to it;
5	confirmed by the display of such	and the Daddy Kool Records website
6	Album with Hyphy's Album	screenshots relied on by Hyphy do not
7	Artwork and Yellowcake's later-	mention or identify either Yellowcake or
	acquired UPC Code offered for	Colonize in any way. Berger Decl., Dkt.
8	download on	82-14 at $\P$ 26-29; Hernandez Decl., Dkt.
9	<daddykoolrecords.com>.</daddykoolrecords.com>	82-16 at ¶¶ 11-14. Moreover, Yellowcake and Colonize conducted an
10	Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	investigation of the alleged infringement
11	and "D" thereto.	of Hyphy's Album Artwork and
11		discovered that in fact it was Hyphy, in
12		corroboration with Morena Music, Inc.
13		doing business as Long Play Music, Inc.,
		who uploaded the albums to Daddy Kool
14		Records (thus Hyphy's accusations of
15		infringement are knowingly false).
1.6		Berger Decl., Dkt. 82-14 at ¶ 30;
16		Hernandez Decl., Dkt. 82-16 at ¶ 15.
17		Daddy Kool Records received the
18		Albums with the Album Artwork from Morena, through Hyphy and Morena's
19		distributor, The Orchard, which is a fact
		that is confirmed in an email chain
20		between Colonize and one of Daddy
21		Kool Records' digital distributors,
22		Audible Magic, who acknowledged that it had acquired the Albums with the
		Album Artwork from The Orchard, who
23		in turn had received them from Morena
24		d/b/a Long Play Music and uploaded
25		them to Daddy Kool Records. Berger
26		Decl., Dkt. 82-14 at ¶ 31; Hernandez Decl., Dkt. 82-16 at ¶¶ 16-17 and Exhibit
		"A" thereto.
27	153. With respect to the Album	Disputed. Yellowcake created its own
28	1	1

## 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

## <u>Hyphy's Undisputed Material Facts</u> <u>and Supporting Evidence:</u>

entitled "Desde La Cantina De Mi Barrio", Hyphy's originally assigned UPC Code is 191018998417. Yellowcake's lateracquired UPC Code is 758381471413. Yellowcake distributed this Album with Hyphy's Album Artwork, as confirmed by the display of such Album with Hyphy's Album Artwork and Yellowcake's lateracquired UPC Code offered for download on <daddykoolrecords.com>.

Martinez Decl. at ¶¶ 8, 12, Exhibits "B" and "D" thereto.

# Opposing Party's Response and Supporting Evidence:

new Album covers after acquiring the sound recordings of the Albums and never used, uploaded or distributed Hyphy's artwork to anyone; Neither Colonize nor Yellowcake has ever had Daddy Kool Records as an account or client or sold any sound recordings to it; and the Daddy Kool Records website screenshots relied on by Hyphy do not mention or identify either Yellowcake or Colonize in any way. Berger Decl., Dkt. 82-14 at ¶¶ 26-29; Hernandez Decl., Dkt. 82-16 at ¶¶ 11-14. Moreover, Yellowcake and Colonize conducted an investigation of the alleged infringement of Hyphy's Album Artwork and discovered that in fact it was Hyphy, in corroboration with Morena Music, Inc. doing business as Long Play Music, Inc., who uploaded the albums to Daddy Kool Records (thus Hyphy's accusations of infringement are knowingly false). Berger Decl., Dkt. 82-14 at ¶ 30; Hernandez Decl., Dkt. 82-16 at ¶ 15. Daddy Kool Records received the Albums with the Album Artwork from Morena, through Hyphy and Morena's distributor, The Orchard, which is a fact that is confirmed in an email chain between Colonize and one of Daddy Kool Records' digital distributors, Audible Magic, who acknowledged that it had acquired the Albums with the Album Artwork from The Orchard, who in turn had received them from Morena d/b/a Long Play Music and uploaded them to Daddy Kool Records. Berger Decl., Dkt. 82-14 at ¶ 31; Hernandez

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Decl., Dkt. 82-16 at ¶¶ 16-17 and Exhibit "A" thereto.
4	154. Before Counter-Defendants knew	Disputed. Neither Yellowcake, nor
5	that Hyphy had discovered proof of their infringement, Hernandez lied	Colonize nor Hernandez has ever used or infringed upon the Album Artwork.
6	under oath during his deposition as	Berger Decl., DKT. 82-14 at ¶¶ 25-33;
7	the person most knowledgeable for	Hernandez Decl., 82-16 at ¶¶ 10-19.
8	Colonize by claiming that Yellowcake and Colonize would	
9	never distribute the Albums with	
10	Hyphy's Album Artwork (even though they had).	
	though they had).	
11	Begakis Decl. at ¶ 10, Exhibit "I"	
12	thereto, Hernandez Depo I at 211:24-	
13	212:6.	
14	155. If Counter-Defendants are able to avoid liability for their infringement	Disputed. Neither Yellowcake, nor Colonize nor Hernandez has ever used or
	of Hyphy's Album Artwork, by	infringed upon the Album Artwork.
15	arguing that only Colonize	Berger Decl. at ¶¶ 25-33; Dkt. 82-16,
16	distributed the Albums, Hyphy will	Hernandez Decl. at ¶¶ 10-19.
17	suffer significant injustice by not	
18	have any recourse in response to such wrongdoing.	
	Such wionguoing.	
19	Martinez Decl. at ¶ 14.	
20		

B. <u>Summary Adjudication Is Proper As To Hyphy's Sixth</u>

<u>Counterclaim For Unfair Competition Because Hyphy Has</u>

<u>Established That Yellowcake And Colonize Engaged In Copyright Infringement</u>

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
156. Defendant/Counterclaimant HYPHY MUSIC, INC. (" <i>Hyphy</i> ")	Undisputed.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	is a record label in the business of collaborating with recording artists	
4	to produce, distribute, and otherwise	
5	exploit sound and audiovisual recordings, coupled with artwork.	
6	Declaration of John Begakis ("Begakis	
7	<b>Decl.</b> ") at ¶ 8, Exhibit "G" thereto, Jose	
8	Martinez Deposition Transcript	
9	("Martinez Depo") at 13:6-14:6.	
10	157. Counter-Defendant JESUS CHAVEZ, SR (" <i>Chavez</i> ") is the	Undisputed that Chavez is the lead singer when he performs with his
11	lead singer of the Spanish-language	backing band, Los Originales De San
12	musical group Los Originales De San Juan (the " <i>Group</i> ").	Juan, and he recorded the six albums that is the subject of this action, titled: (i) <i>Los</i>
13	2 /	Originales de San Juan- "El
14	Begakis Decl. at ¶ 13, Exhibit "L"	Campesino"; (ii) Los Originales de San
	thereto, Jesus Chavez, Sr. Deposition, Volume I (" <i>Chavez Depo I</i> ") at 25:13-	Juan-"Corridos de Poca M"; (iii) Los Originales de San Juan-"En Vivo Desde
15	14; Begakis Decl. at ¶ 14, Exhibit "M"	La Cantina de Mi Barrio"; (iv) Los
16	thereto, Jesus Chavez, Sr. Deposition,	Originales de San Juan-"Nuestra
17	Volume II (" <i>Chavez Depo II</i> ") at 16:22-17:5.	Historia En Vivo"; (v) Los Originales de San Juan- "Amigos y Contrarios"; and
18		(vi) Los Originales de San Juan-"Naci
19		Con Suerte de Rey Con Mariachi" (collectively "Albums").
20		
21		Disputes to the extent it implies lead singer was Chavez's only role in Los
22		Originales De San Juan. Chavez is Los
23		Originales De San Juan's sole founder, and principal. Chavez Decl., Dkt. 46-2
24		at ¶ 3; Defendants' Counterclaim, Dkt. 7
25		at ¶ 15 (referring to Chavez as "the founder and principal"); Defendants'
26		First Amended Counterclaim, Dkt. 15 at
27		¶ 15 (same).
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
	and Supporting Evidence:	Supporting Evidence:
3		Chavez was the sole producer, sole
₁		author and sole creator of the sound recordings of the Albums and therefore
		possessed all original rights, title and
		interest in the sound recordings of the
		Albums. Declaration of Jesus Chavez,
		Sr. (the "Chavez Decl."), Dkt. 46-2 at ¶¶
		8-21; Declaration of Hector Rosales (the "Rosales Decl."), Dkt. 46-1 at ¶¶ 7-10;
		Martinez Depo. at 60:5-61:2
		(disclaiming Hyphy's involvement in the
		recording of - "Naci Con Suerte de Rey
	158. The Group operates as a co-equal	Con Mariachi"). Undisputed Flores formerly played the
	158. The Group operates as a co-equal partnership comprised of Chavez	accordion, and that Vargas formerly
	and fellow band members Domingo	played the drums at times for Chavez
	Torres Flores (" <i>Flores</i> "), who plays	when Chavez performed with his
l	the accordion, and Alfonso Vargas	backing band, Los Originales De San
	("Vargas"), who plays the drums.	Juan.
	Begakis Decl. at ¶ 13, Exhibit "L"	Disputes that either Flores or Vargas
	thereto, Chavez Depo I at 18:16-19:3,	were co-equal partners in Los Originales
	20:8-16, 21:16-19; Begakis Decl. at ¶	De San Juan. Chavez was the sole
	11, Exhibit "J" thereto, Deposition Transcript of Alfonso Vargas ("Vargas	producer, sole author and sole creator of the sound recordings of the Albums and
	<b>Depo</b> ") at 17:16-19; 27:17-22; 143:14-	therefore possessed all original rights,
	16; Begakis Decl. at ¶ 12, Exhibit "K"	title and interest in the sound recordings
	thereto, Deposition Transcript of	of the Albums. Chavez Decl., Dkt. 46-2
	Domingo Torres Flores ("Flores	at ¶¶ 8-21; Rosales Decl., Dkt. 46-1 at ¶¶
	<b>Depo</b> ") at 47:15-25, 48:19-23	7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
		recording of - "Naci Con Suerte de Rey
		Con Mariachi").
	159. In or about February 2013,	Disputes the Albums were created
	Hyphy and the Group began	pursuant to the alleged Agreement. In or
	working together to co-create various sound recordings to be	about 2013, Chavez, and Chavez alone, entered into an oral distribution
	embodied on multiple albums,	agreement, not an oral recording

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	which they orally agreed were to be owned by Hyphy (the	agreement, with Hyphy. Chavez Decl., Dkt. 46-2 at ¶ 7.
4	"Agreement").	The cited deposition testimony of
5	Declaration of Jose Martinez ("Martinez Decl.") at ¶ 3; Decl. at ¶ 13,	Chavez does not support statement #159 inasmuch as Chavez's testimony that an
7	Exhibit "L" thereto, Chavez Depo I at 34:7-11; Decl. at ¶ 14, Exhibit "M"	Album was recorded "with Hyphy" refers to such Album as being part of the
8	thereto, Chavez Depo II at 19:14-17, 32:16-20, 35:12-21.	distribution agreement between Chavez and Hyphy.
10		Defendant consistently confirmed in
11		Defendant consistently confirmed in both versions of its Counterclaims that
12		the alleged oral agreement was between only Hyphy and Chavez. Defendant's
13		Counterclaim, Dkt. 7 at ¶¶ 15-17; Defendant's First Amended
14		Counterclaim, Dkt. 15 at ¶¶ 15-17.
15		Moreover, Martinez, the person who
16 17		made the alleged oral agreement on behalf of Defendant, further confirmed,
18		repeatedly, under penalty of perjury, in his Declaration in support of Reply to
19		Counter-Defendants' Challenge to the
20		Validity of Certain Copyright Registrations (the "August 2021
21		Martinez Reply Decl."), that the alleged oral agreement was between only Hyphy
22		and Chavez. August 2021 Martinez
23		Reply Decl., Dkt. 45-1 at ¶¶ 2, 4, 7, 8.
24		Defendant confirmed in other of its
25		filings with the Court that the alleged oral agreement was between only Hyphy
26		and Chavez. Hyphy's Opposition to
27		Yellowcake's Motion to Dismiss Hyphy's Counterclaims (the "Hyphy
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Opp. To MTD"), Dkt. 27 at pg. 1 ln. 27 –
4		pg. 2 ln. 5; Hyphy's Reply to Counterdefendants' Challenge to the
5		Validity of Certain Copyright
6		Registrations (the "August 2021 Hyphy Reply"), Dkt. 45 at pg. 1 lns. 16-18.
7		Florez and Vargas did not possess any
8		alienable right, title or interest in the
9		Albums. Chavez was the sole producer, sole author and sole creator of the sound
10		recordings of the Albums and therefore
11		possessed all original rights, title and
12		interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
13		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
14		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
15		recording of - "Naci Con Suerte de Rey
16		Con Mariachi").
		Neither Hyphy nor anyone affiliated with
17		Hyphy provided any original creative
18		input into the recording of the Albums, provided any original material for the
19		sound recordings of the Albums or
20		exercised any artistic, production or recording control over the Albums.
21		Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
22		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
23		Chavez never had an agreement or
24		understanding with Hyphy, or anyone
25		else, that it would be deemed a co-author
26		of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19.
27	160. The albums created pursuant to	Disputes. Six, not five, albums are the
28	the Agreement were entitled (1)	subject of Yellowcake's claims, <i>i.e.</i> , the

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	"Amigos y Contrarios"; (2) "Corridos de Poca M"; (3) "El	six "Albums" identified in Yellowcake's response #2 above. Further disputes the
4	Campesino"; (4) "Desde La Cantina	Albums were created pursuant to the
5	de Mi Barrio (En Vivo)"; and (5)	alleged Agreement. In or about 2013,
6	"Nuestra Historia (En Vivo)" (collectively, the " <i>Los Originales</i>	Chavez, and Chavez alone, entered into an oral distribution agreement, not an
7	Albums" or "Albums").	oral recording agreement, with Hyphy. Chavez Decl., Dkt. 46-2 at ¶ 7.
8	Martinez Decl. at ¶ 4; Begakis Decl. at	Chavez Been, Bkt. 40 2 at    7.
9	¶ 8, Exhibit "G" thereto, Martinez Depo	Defendant consistently confirmed in
10	at 44:7-23, 51:22-25.	both versions of its Counterclaims that
		the alleged oral agreement was between only Hyphy and Chavez. Defendant's
11		Counterclaim, Dkt. 7 at ¶¶ 15-17;
12		Defendant's First Amended
13		Counterclaim, Dkt. 15 at ¶¶ 15-17.
14		Moreover, Martinez, the person who
15		made the alleged oral agreement on
16		behalf of Defendant, further confirmed, repeatedly, under penalty of perjury, in
17		the August 2021 Martinez Reply Decl.,
18		that the alleged oral agreement was
		between only Hyphy and Chavez. August 2021 Martinez Reply Decl., Dkt.
19		45-1 at ¶¶ 2, 4, 7, 8.
20		
21		Defendant confirmed in other of its filings with the Court that the alleged
22		oral agreement was between only Hyphy
23		and Chavez. Hyphy's Opposition to
24		Yellowcake's Motion to Dismiss
25		Hyphy's Counterclaims. Hyphy Opp. To MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln.
		5; August 2021 Hyphy Reply, Dkt. 45 at
26		pg. 1 lns. 16-18.
27		Florez and Vargas did not possess any
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		alienable right, title or interest in the Albums. Chavez was the sole producer,
4		sole author and sole creator of the sound
5 6		recordings of the Albums and therefore possessed all original rights, title and interest in the sound recordings of the
7		Albums. Dkt. 46-2 at ¶¶ 8-21; Rosales
8		Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's
9		involvement in the recording of - "Naci
10		Con Suerte de Rey Con Mariachi").
11		Neither Hyphy nor anyone affiliated with Hyphy provided any original creative
12		input into the recording of the Albums,
13		provided any original material for the sound recordings of the Albums or
14		exercised any artistic, production or
15		recording control over the Albums. Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19;
16		Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
17		Chavez never had an agreement or
18 19		understanding with Hyphy, or anyone else, that it would be deemed a co-author
20		of the Albums. Chavez Decl., Dkt. 46-2
21	161. One of the other two albums	at ¶¶ 8-13, 19.  Undisputed.
22	identified in Yellowcake's Complaint, entitled "Chuy Chavez y	Chaispatea.
23	Sus Amigos," has no connection to	
24	this dispute and wasn't even recorded by Chavez.	
25		
26	Martinez Decl. at ¶ 4; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo	
27	at 44:24:-9, 154:11-155:25.	D' ( TT ') 1 1 ')
28	162. In addition to its original creative	Disputes. The cited deposition

#### **Hyphy's Undisputed Material Facts Opposing Party's Response and** 1 and Supporting Evidence: **Supporting Evidence:** 2 testimony of Martinez, and the contributions to the production, 3 interrogatory response referred to recording and overall creation of the therein, does not support statement #162 Los Originales Albums, Hyphy also 4 designed and created the artwork inasmuch as such testimony states the 5 featured on the cover of each Album Album Artwork was designed and (the "Album Artwork"). created by Marcelino Mendoza, an 6 independent contractor. 7 Martinez Decl. at ¶ 7; Begakis Decl. at ¶ 8, Exhibit "G" thereto, Martinez Depo Further disputes to the extent statement 8 #162 claims that Hyphy provided at 127:12-21. 9 "original creative contributions to the production, recording and overall 10 creation of the Los Originales Albums." 11 Chavez was the sole producer, sole 12 author and sole creator of the sound recordings of the Albums and therefore 13 possessed all original rights, title and 14 interest in the sound recordings of the Albums. Dkt. 46-2 at $\P\P$ 8-21; Rosales 15 Decl., Dkt. 46-1 at ¶¶ 7-10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's 16 involvement in the recording of - "Naci 17 Con Suerte de Rey Con Mariachi"). 18 Neither Hyphy nor anyone affiliated with 19 Hyphy provided any original creative input into the recording of the Albums, 20 provided any original material for the 21 sound recordings of the Albums or 22 exercised any artistic, production or recording control over the Albums. 23 Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; 24 Rosales Decl., Dkt. 46-1 at ¶¶ 7-10. 25 Chavez never had an agreement or 26 understanding with Hyphy, or anyone else, that it would be deemed a co-author 27 of the Albums. Chavez Decl., Dkt. 46-2 28

<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	at ¶¶ 8-13, 19.
163. Hyphy released the Albums, with	Undisputed.
the Album Artwork, for distribution	
through all available digital service	
providers (the " <i>DSPs</i> ") between 2013 and 2017.	
2013 and 2017.	
Martinez Decl. at ¶ 8, Exhibit "B"	
thereto; Begakis Decl. at ¶ 8, Exhibit	
"G" thereto, Martinez Depo at 44:7-23;	
51:18-25; 67:24-69:5.	
164. Thereafter, Hyphy obtained	Disputes to the extent that statement
copyright registrations for all of	#164 implies that the release dates of the
such Album Artwork.	various Albums through DSPs between
	2013 and 2017 was proximate in time to
Martinez Decl. at ¶ 9, Exhibit "C"	the dates that Hyphy obtained copyright
thereto; Begakis Decl. at ¶ 8, Exhibit	registration for the Album Artwork.
"G" thereto, Martinez Depo at 133:9-	Hyphy obtained all such registration in
136:5.	May 2020. Martinez Depo at 133:9-
165. Yellowcake is a competing	136:5.  Disputes. Yellowcake is primarily
record label and distributor of sound	engaged in the business of, among other
recordings, utilizing Colonize as its	things, purchasing, owning, licensing
"distribution arm" to release and	and exploiting intellectual property
exploit rights that Yellowcake	rights. Declaration of Kevin Berger (the
acquires.	"Berger Decl."), Dkt. 82-14 at ¶ 3.
-	Colonize is a digital music distributor
Begakis Decl. at ¶ 9, Exhibit "H"	that enters into contracts with numerous
thereto, Deposition Transcript of Kevin	different record labels and performers.
Berger ("Berger Depo") at 91:19-23;	Declaration of Jose David Hernandez
Begakis Decl. at ¶ 10, Exhibit "I"	(the "Hernandez Decl."), Dkt. 82-16 at
thereto, Deposition Transcript of Jose David Hernandez, Volume I	¶¶ 3-6. Yellowcake and Colonize are
("Hernandez Depo I") at 77:19-21.	two completely separate entities with two different owners.
166. Hernandez is a co-owner of both	Undisputed that Hernandez is an owner
Yellowcake and Colonize.	of Colonize and that he once was an
	owner of Yellowcake.
	owner of Tellowcake.

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	thereto, Hernandez Depo I at 51:9-11, 116:18-117:14.	
4	167. In his position as co-owner of	Disputes. The cited deposition
5	both Yellowcake and Colonize, Hernandez has admitted that both	testimony of Hernandez does not support statement #167 inasmuch as Hernandez
6	entities have operated – and continue to operate – as one single	testified that Colonize "gets some stuff of value" for distributing Yellowcake's
7	economic entity, with common	music. Hernandez Depo I at 80:13.
8	ownership, common business	and the second s
9	operations, common office space,	
10	common staff, and many other common resources.	
11	common resources.	
12	Begakis Decl. at ¶ 10, Exhibit "I"	
	thereto, Hernandez Depo I at 80:3-20.  168. In or about March 2019,	Disputes. The cited deposition
13	Hernandez approached Chavez	testimony of Chavez does not support
14	about selling the Los Originales	statement #168 inasmuch as Chavez
15	Albums to Yellowcake.	testified he does not remember when
16	Begakis Decl. at ¶ 14, Exhibit "M"	Hernandez approached him, but it was in the year 2020 (Chavez Depo I at 78:9-
17	thereto, Chavez Depo II at 77:13-17,	25). The cited deposition testimony of
	79:7-9, 79:17-80:2, 81:7-16; Begakis	Hernandez does not support statement
18	Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 148:24-149:5.	#168 inasmuch as Hernandez does not testify that he approached Chavez, and
19	11cmandez Depo 1 at 146.24-147.3.	he testifies "it could have been 2018"
20		when he first discussed with Chavez
21		purchasing the Albums (Hernandez Depo I at 148:24-149:5).
22		
23		On or about March 21, 2019, Chavez sold the entirety of his rights, title and
24		interest in the copyrights of the sound
25		recordings of the Albums to Yellowcake.
26		Chavez Decl., Dkt. 46-2 at ¶¶ 15; Asset Purchase Agreement, Dkt. 83-3.
27	169. Hernandez had previously	Disputes. Hernandez never worked for
28	worked with Hyphy and had	Hyphy, and statement # 169 is

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	secretly gained valuable information	unsubstantiated and self-serving.
4	on Hyphy's business and relationship with Chavez.	The cited paragraph in the Martinez
5	Hernandez therefor knew that	Decl. stating that Hernandez "used to
6	Hyphy only had an oral agreement	work with Hyphy" and therefore "obtained valuable information
	with the Group.	including the knowledge Hyphy's
7	Martinez Decl. at ¶ 3; Begakis Decl. at	Agreement with the Group was oral" is
8	¶ 8, Exhibit "G" thereto, Martinez Depo at 26:2-12.	misleading because Martinez testified
9	at 20.2-12.	Hernandez was merely an initial third- party distributer of Hyphy music
10		(Martinez Depo. at 26:6-12), and such
11		statement is pure speculation as Martinez also testified that Hyphy's business
12		dealings with Hernandez began and
13		ended in 2010, approximately three years
14		prior to the existence of the alleged oral
		agreement (Martinez Depo. at 15:10-15, 26:20-23).
15	170. Hernandez approached and	Disputes. The cited testimony of Chavez
16	convinced Chavez, without Hyphy	does not refer to any knowledge his
17	or the rest of the Group's knowledge, to assign the Albums to	backing musicians may or may not have had regarding the alleged conversation.
18	Yellowcake in exchange for	Moreover, Chavez testified that the
19	payment of \$500,000.	alleged transaction was a purchase, not
20	Begakis Decl. at ¶ 14, Exhibit "M"	an assignment. The cited testimony of Hernandez is unrelated to statement
21	thereto, Chavez Depo II at 77:13-17,	#170.
22	79:7-9, 79:17-80:2, 80:5-13, 81:7-16;	
	Begakis Decl. at ¶ 10, Exhibit "I" thereto, Hernandez Depo I at 107:4-20.	Further disputes to the extent statement # 170 implies that anyone other than
23	thereto, Herhandez Bepo I at 107.1 20.	Chavez possessed the right to convey
24		any right in the Albums. Defendant
25		consistently confirmed in both versions of its Counterclaims that the alleged oral
26		agreement was between only Hyphy and
27		Chavez. Defendant's Counterclaim, Dkt.
28		17 at ¶¶ 15-17; Defendant's First

	II .b 9. II. P . INC. C. I.E.	O
1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Amended Counterclaim, Dkt. 15 at ¶¶ 15-17.
4		Managara Martina dha managara
5		Moreover, Martinez, the person who made the alleged oral agreement on
6		behalf of Defendant, further confirmed, repeatedly, under penalty of perjury, in
7		the August 2021 Martinez Reply Decl.,
8		that the alleged oral agreement was between only Hyphy and Chavez.
9		August 2021 Martinez Reply Decl., Dkt.
10		45-1 at ¶¶ 2, 4, 7, 8.
11		Defendant confirmed in other of its
12		filings with the Court that the alleged
13		oral agreement was between only Hyphy and Chavez. Hyphy's Opposition to
14		Yellowcake's Motion to Dismiss
15		Hyphy's Counterclaims. Hyphy Opp. To
16		MTD, Dkt. 27 at pg. 1 ln. 27 – pg. 2 ln. 5; August 2021 Hyphy Reply, Dkt. 45 at
17		pg. 1 lns. 16-18.
18		Florez and Vargas did not possess any
19		alienable right, title or interest in the
20		Albums. Chavez was the sole producer, sole author and sole creator of the sound
21		recordings of the Albums and therefore
22		possessed all original rights, title and
23		interest in the sound recordings of the Albums. Chavez Decl., Dkt. 46-2 at ¶¶
		8-21; Rosales Decl., Dkt. 46-1 at ¶¶ 7-
24		10; Martinez Depo. at 60:5-61:2 (disclaiming Hyphy's involvement in the
25		recording of - "Naci Con Suerte de Rey
26		Con Mariachi").
27		Neither Hyphy nor anyone affiliated with
28		, , ,,

Hyphy's Undisputed Mater	ial Facts Opposing Party's Response and
and Supporting Evider	nce: Supporting Evidence:
	Hyphy provided any original creative
	input into the recording of the Albums, provided any original material for the
	sound recordings of the Albums or
	exercised any artistic, production or
	recording control over the Albums.
	Chavez Decl., Dkt. 46-2 at ¶¶ 8-13, 19; Rosales Decl., Dkt. 46-1 at ¶¶ 7-10.
	Chavez never had an agreement or
	understanding with Hyphy, or anyone else, that it would be deemed a co-author
	of the Albums. Chavez Decl., Dkt. 46-2
454 01 17711 1	at ¶¶ 8-13, 19.
171. Chavez and Yellowcake their purported agreement	1
"Asset Purchase and Assig	
Agreement" executed on o	r about
March 21, 2019 (the "Asse	t e
Purchase Agreement").	
Begakis Decl. at ¶ 7, Exhibit "	F"
thereto, Plaintiff/Counterdefen	
Document Production (PLF00 PLF000039).	0021-
172. Hyphy distributed the A	lbums Disputes because on or about March 21,
with the Album Artwork d	<u>-</u>
times in which Hyphy beli	
possessed the exclusive rig distribute the Albums.	of the sound recordings of the Albums to Yellowcake; at that point in time Hyphy
distribute the Albums.	lost whatever rights it may have had to
Martinez Decl. at ¶ 8, Exhibit	"B" distribute the Albums. Chavez Decl.,
thereto; Begakis Decl. at ¶ 8, I	
"G" thereto, Martinez Depo at 68:24.	67:24- Agreement, Dkt. 83-3.
173. Counter-Defendants eng	gaged in Disputed. Neither Yellowcake, nor
the unauthorized distribution their own, pirated version	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	Albums with such Album Artwork.	25-33; Dkt. 82-16, Hernandez Decl. at ¶¶ 10-19.
4	Martinez Decl. at ¶ 12, Exhibit "D" thereto.	
5 6	174. When first distributed by Hyphy, each Album was assigned a unique International Standard Recording	Disputes for the same reasons and objections set forth in the first paragraph of Yellowcake's response to statement #
7 8	Code (" <i>ISRC</i> ") and Universal Product Code (" <i>UPC</i> ").	144.
9	Begakis Decl. at ¶ 15, Exhibit "N"	Moreover, the cited deposition testimony
10	thereto, Deposition Transcript of Lawrence H. Katz, Esq. (" <i>Katz Depo</i> ")	of Katz does not support statement #174 inasmuch as Katz specifically testified he
12	at 68:8-18.	has no personal knowledge of whether each Album was assigned an ISRC or
13		UPC when it was first distributed, or if
14		any such codes were procured by Hyphy or The Orchard. Katz Depo. at 68:2-
15	175. It is standard for a new sound	69:1, 69:22-70:7.  Disputes for the same reasons and
16 17	recording placed into the stream of distribution to be assigned a unique	objections set forth in the first paragraph of Yellowcake's response to statement #
18	ISRC and UPC.	144.
19	Begakis Decl. at ¶ 15, Exhibit "N" thereto, Katz Depo at 46:1-47:4.	Moreover, the cited deposition testimony of Katz does not support statement #175
20	thereto, read Bope at 10.11 17.11	inasmuch as Katz admitted he lacks
21		personal knowledge of how ISRCs are assigned or if they are unique; he
22		testified that "many years ago" he called the isrc.net company and that is what
23		was explained to him (Katz Depo. at
25		46:21-47:4), and his understanding is that UPCs serve a similar purpose (Katz
26		depo at 47:15-18).
27 28		The cited deposition testimony of Katz also does not support statement #175

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		inasmuch as Katz admitted that ISRCs
4		are not necessarily unique to a sound recording because digital service
		providers may "accept a new ISRC code
5		from a new owner of a sound recording
6		that is different from the previous ISRC
7		code" (Katz Depo 63:12-64:5), and that
8		ISRC assigned to a sound recording can
	176. ISRCs and UPCs are sometimes	change (Katz Depo. 165:18-22). Disputes for the same reasons and
9	referred to as "digital social security	objections set forth in the first paragraph
10	numbers" for products, and are used	of Yellowcake's response to statement #
11	to track data regarding the	144.
12	distribution and exploitation of each respective Albums, and the sound	Moreover, the cited deposition testimony
	recordings thereon.	of Katz does not support statement #176
13		inasmuch as Katz admitted he lacks
14	Begakis Decl. at ¶ 15, Exhibit "N"	personal knowledge of how ISRCs are
15	thereto, Katz Depo at 46:1-47:4, 46:23-	assigned or if they are unique; he
16	47:4, 47:5-18.	testified that "many years ago" he called the isrc.net company and that is what
17		was explained to him (Katz Depo. at
		46:21-47:4). Katz did not testify that
18		UPCs are referred to as "digital social
19		security numbers."
20		The cited deposition testimony of Katz
21		also does not support statement #176
22		inasmuch as Katz admitted that ISRCs
		are not necessarily unique to a sound recording because digital service
23		providers may "accept a new ISRC code
24		from a new owner of a sound recording
25		that is different from the previous ISRC
26		code" (Katz Depo 63:12-64:5), and that
		ISRC assigned to a sound recording can change (Katz Depo. 165:18-22).
27	177. Because ISRCs and UPCs are	Disputes for the same reasons and
28		1 1

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	used to track data regarding each	objections set forth in the first paragraph
4	Album, and all sound recordings contained thereon, such codes	of Yellowcake's response to statement # 144.
5	should not have ever been	
6	duplicated.	Moreover, the cited deposition testimony
	Begakis Decl. at ¶ 15, Exhibit "N"	of Katz does not support statement #177 inasmuch as Katz admitted he lacks
7	thereto, Katz Depo at 48:23-49:14.	personal knowledge of how ISRCs and
8		UPCs were assigned to the Albums
9		(Katz Depo. at 68:2-69:1, 69:22-70:7) and he does not testify that "ISRCs and
10		UPCs are used to track data regarding
11	170 X 11 1 1 1 1 1	each Album."
12	178. Yellowcake should have requested that Hyphy transfer	Disputes for the same reasons and objections set forth in the first paragraph
13	Albums and their assigned ISRCs	of Yellowcake's response to statement #
	and UPCs to Yellowcake, in the	144.
14	event Yellowcake actually acquired the Albums lawfully.	Moreover, the cited deposition testimony
15	the Mounts lawlung.	of Katz does not support statement #178
16	Begakis Decl. at ¶ 15, Exhibit "N"	inasmuch as such testimony constitutes
17	thereto, Katz Depo at 74:1-22.	Katz's personal speculation and conclusions as to Yellowcake's and
18		Colonize's knowledge and motives; and
19		moreover such testimony does not
20		reference the lawfulness of Yellowcake's acquisition of the Albums.
21	179. Yellowcake ignored established	Disputes for the same reasons and
22	industry norms governing how the	objections set forth in the first paragraph
	Albums should have been transferred, and instead simply re-	of Yellowcake's response to statement # 144.
23	released unauthorized duplicate	177.
24	(i.e., pirated) versions with the	Moreover, neither Yellowcake, nor
25	Album Artwork, and with newly assigned ISRC and UPCs.	Colonize nor Hernandez has ever used the Album Artwork. Berger Decl. at ¶¶
26	assigned isite and of es.	25-33; Dkt. 82-16, Hernandez Decl. at ¶¶
27	Martinez Decl. at ¶ 11; Begakis Decl. at	10-19.
28	¶ 15, Exhibit "N" thereto, Katz Depo at	

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3	70:23-71:9, 74:1-22, 74:23-75:17.	Moreover, the cited deposition testimony
		of Katz does not support statement #179
4		inasmuch as Katz specifically testified he has no personal knowledge of whether
5		each Album was assigned an ISRC or
6		UPC when it was first distributed, or if
7		any such codes were procured by Hyphy
8		or The Orchard, and he makes no reference to the Album Artwork
		whatsoever. Katz Depo. at 68:2-69:1,
9		69:22-70:7.
10	180. Although Counter-Defendants	Disputed. Yellowcake created its own
11	later attempted to scrub the internet of their initial, infringing	new Album covers after acquiring the sound recordings of the Albums and
12	distribution of the Albums, Hyphy	never used, uploaded or distributed
13	obtained proof of such distribution	Hyphy's artwork to anyone; Neither
14	via one of the DSPs located at	Colonize nor Yellowcake has ever had
	<daddykoolrecords.com>.</daddykoolrecords.com>	Daddy Kool Records as an account or client or sold any sound recordings to it;
15	Martinez Decl. at ¶ 12, Exhibit "D"	and the Daddy Kool Records website
16	thereto.	screenshots relied on by Hyphy do not
17		mention or identify either Yellowcake or Colonize in any way. Berger Decl., Dkt.
18		82-14 at ¶¶ 26-29; Hernandez Decl., Dkt.
19		82-16 at ¶¶ 11-14. Moreover,
20		Yellowcake and Colonize conducted an
		investigation of the alleged infringement of Hyphy's Album Artwork and
21		discovered that in fact it was Hyphy, in
22		corroboration with Morena Music, Inc.
23		doing business as Long Play Music, Inc., who uploaded the albums to Daddy Kool
24		Records (thus Hyphy's accusations of
25		infringement are knowingly false).
26		Berger Decl., Dkt. 82-14 at ¶ 30;
		Hernandez Decl., Dkt. 82-16 at ¶ 15. Daddy Kool Records received the
27		Albums with the Album Artwork from
28		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		Morena, through Hyphy and Morena's
		distributor, The Orchard, which is a fact
4		that is confirmed in an email chain between Colonize and one of Daddy
5		Kool Records' digital distributors,
6		Audible Magic, who acknowledged that
7		it had acquired the Albums with the Album Artwork from The Orchard, who
8		in turn had received them from Morena
9		d/b/a Long Play Music and uploaded
		them to Daddy Kool Records. Berger
10		Decl., Dkt. 82-14 at ¶ 31; Hernandez Decl., Dkt. 82-16 at ¶¶ 16-17 and Exhibit
11		"A" thereto.
12		
13		Moreover, the cited paragraph in the
14		Martinez Decl. constitutes nothing more than self-serving hearsay.
15	181. With respect to the Album	Disputed. Yellowcake created its own
	entitled "Corridos de Poca M",	new Album covers after acquiring the
16	Hyphy's originally assigned UPC Code is 889176663055.	sound recordings of the Albums and never used, uploaded or distributed
17	Yellowcake's later-acquired UPC	Hyphy's artwork to anyone; Neither
18	Code is 758381471406. Yellowcake	Colonize nor Yellowcake has ever had
19	distributed this Album with	Daddy Kool Records as an account or
20	Hyphy's Album Artwork, as confirmed by the display of such	client or sold any sound recordings to it; and the Daddy Kool Records website
21	Album with Hyphy's Album	screenshots relied on by Hyphy do not
22	Artwork and Yellowcake's later-	mention or identify either Yellowcake or
	acquired UPC Code offered for download on	Colonize in any way. Berger Decl., Dkt. 82-14 at ¶¶ 26-29; Hernandez Decl., Dkt.
23	<a href="dawfioad-on"><daddykoolrecords.com">&lt;.a href="dawfioad-on"&gt;</daddykoolrecords.com"></a>	82-16 at ¶¶ 11-14. Moreover,
24		Yellowcake and Colonize conducted an
25	Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	investigation of the alleged infringement
26	and "D" thereto.	of Hyphy's Album Artwork and discovered that in fact it was Hyphy, in
27		corroboration with Morena Music, Inc.
28		doing business as Long Play Music, Inc.,

Hyphy's Undisputed Material Facts	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
	who uploaded the albums to Daddy Kool
	Records (thus Hyphy's accusations of
	infringement are knowingly false).
	Berger Decl., Dkt. 82-14 at ¶ 30;
	Hernandez Decl., Dkt. 82-16 at ¶ 15.
	Daddy Kool Records received the
	Albums with the Album Artwork from
	Morena, through Hyphy and Morena's
	distributor, The Orchard, which is a fact
	that is confirmed in an email chain
	between Colonize and one of Daddy
	Kool Records' digital distributors,
	Audible Magic, who acknowledged that
	it had acquired the Albums with the Album Artwork from The Orchard, who
	in turn had received them from Morena
	d/b/a Long Play Music and uploaded
	them to Daddy Kool Records. Berger
	Decl., Dkt. 82-14 at ¶ 31; Hernandez
	Decl., Dkt. 82-16 at ¶¶ 16-17 and Exhibit
	"A" thereto.
182. With respect to the Album	Disputed. Yellowcake created its own
entitled "El Campesino", Hyphy's	new Album covers after acquiring the
originally assigned UPC Code is	sound recordings of the Albums and
190374798310. Yellowcake's later-	never used, uploaded or distributed
acquired UPC Code is	Hyphy's artwork to anyone; Neither
758381471420. Yellowcake	Colonize nor Yellowcake has ever had
distributed this Album with	Daddy Kool Records as an account or
Hyphy's Album Artwork, as	client or sold any sound recordings to it;
confirmed by the display of such	and the Daddy Kool Records website
Album with Hyphy's Album	screenshots relied on by Hyphy do not
Artwork and Yellowcake's later-	mention or identify either Yellowcake or
acquired UPC Code offered for	Colonize in any way. Berger Decl., Dkt.
download on	82-14 at ¶¶ 26-29; Hernandez Decl., Dkt.
<daddykoolrecords.com>.</daddykoolrecords.com>	82-16 at ¶¶ 11-14. Moreover,
Marting Deal -4 MI 0 10 E 1'1', "E"	Yellowcake and Colonize conducted an
Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	investigation of the alleged infringement
and "D" thereto.	of Hyphy's Album Artwork and

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	Supporting Evidence:
3		discovered that in fact it was Hyphy, in
4		corroboration with Morena Music, Inc. doing business as Long Play Music, Inc.,
		who uploaded the albums to Daddy Kool
5		Records (thus Hyphy's accusations of
6		infringement are knowingly false).
7		Berger Decl., Dkt. 82-14 at ¶ 30;
		Hernandez Decl., Dkt. 82-16 at ¶ 15.
8		Daddy Kool Records received the
9		Albums with the Album Artwork from Morena, through Hyphy and Morena's
10		distributor, The Orchard, which is a fact
11		that is confirmed in an email chain
11		between Colonize and one of Daddy
12		Kool Records' digital distributors,
13		Audible Magic, who acknowledged that
14		it had acquired the Albums with the
		Album Artwork from The Orchard, who in turn had received them from Morena
15		d/b/a Long Play Music and uploaded
16		them to Daddy Kool Records. Berger
17		Decl., Dkt. 82-14 at ¶ 31; Hernandez
		Decl., Dkt. 82-16 at ¶¶ 16-17 and Exhibit
18	102 W/41	"A" thereto.
19	183. With respect to the Album entitled "Desde La Cantina De Mi	Disputed. Yellowcake created its own new Album covers after acquiring the
20	Barrio", Hyphy's originally	sound recordings of the Albums and
21	assigned UPC Code is	never used, uploaded or distributed
	191018998417. Yellowcake's later-	Hyphy's artwork to anyone; Neither
22	acquired UPC Code is	Colonize nor Yellowcake has ever had
23	758381471413. Yellowcake	Daddy Kool Records as an account or
24	distributed this Album with	client or sold any sound recordings to it;
	Hyphy's Album Artwork, as confirmed by the display of such	and the Daddy Kool Records website screenshots relied on by Hyphy do not
25	Album with Hyphy's Album	mention or identify either Yellowcake or
26	Artwork and Yellowcake's later-	Colonize in any way. Berger Decl., Dkt.
27	acquired UPC Code offered for	82-14 at ¶¶ 26-29; Hernandez Decl., Dkt.
28	download on	82-16 at ¶¶ 11-14. Moreover,
20		

1	Hyphy's Undisputed Material Facts	Opposing Party's Response and
2	and Supporting Evidence:	<b>Supporting Evidence:</b>
3	<a href="mailto:daddykoolrecords.com">.</a>	Yellowcake and Colonize conducted an
4	Martinez Decl. at ¶¶ 8, 12, Exhibits "B"	investigation of the alleged infringement of Hyphy's Album Artwork and
	and "D" thereto.	discovered that in fact it was Hyphy, in
5		corroboration with Morena Music, Inc.
6		doing business as Long Play Music, Inc., who uploaded the albums to Daddy Kool
7		Records (thus Hyphy's accusations of
8		infringement are knowingly false).
9		Berger Decl., Dkt. 82-14 at ¶ 30;
10		Hernandez Decl., Dkt. 82-16 at ¶ 15.  Daddy Kool Records received the
11		Albums with the Album Artwork from
12		Morena, through Hyphy and Morena's
		distributor, The Orchard, which is a fact that is confirmed in an email chain
13		between Colonize and one of Daddy
14		Kool Records' digital distributors,
15		Audible Magic, who acknowledged that it had acquired the Albums with the
16		Album Artwork from The Orchard, who
17		in turn had received them from Morena
18		d/b/a Long Play Music and uploaded them to Daddy Kool Records. Berger
		Decl., Dkt. 82-14 at ¶ 31; Hernandez
19		Decl., Dkt. 82-16 at ¶¶ 16-17 and Exhibit
20	184. Before Counter-Defendants knew	"A" thereto.
21	that Hyphy had discovered proof of	Disputed. Neither Yellowcake, nor Colonize nor Hernandez has ever used or
22	their infringement, Hernandez lied	infringed upon the Album Artwork.
23	under oath during his deposition as the person most knowledgeable for	Berger Decl., DKT. 82-14 at ¶¶ 25-33;
24	Colonize by claiming that	Hernandez Decl., 82-16 at ¶¶ 10-19.
25	Yellowcake and Colonize would	
26	never distribute the Albums with	
27	Hyphy's Album Artwork (even though they had).	
	<i>yy</i>	
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<b>Hyphy's Undisputed Material Facts</b>	Opposing Party's Response and
and Supporting Evidence:	Supporting Evidence:
Begakis Decl. at ¶ 10, Exhibit "I"	
thereto, Hernandez Depo I at 211:24-212:6.	
185. If Counter-Defendants are able to avoid liability for their infringement of Hyphy's Album Artwork, by arguing that only Colonize distributed the Albums, Hyphy will suffer significant injustice by not have any recourse in response to such wrongdoing.	Disputed. Neither Yellowcake, nor Colonize nor Hernandez has ever used or infringed upon the Album Artwork. Berger Decl. at ¶¶ 25-33; Dkt. 82-16, Hernandez Decl. at ¶¶ 10-19.
Martinez Decl. at ¶ 14.	

Dated: August 4, 2023

Respectfully submitted,

### ABRAMS FENSTERMAN, LLP

By: /s/ Seth L. Berman
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Attorneys for Plaintiff Yellowcake, Inc., and
Counterdefendants Yellowcake, Inc.,
Colonize Media, Inc., and Jose David
Hernandez

1	CERTIFICATE OF SERVICE
2	I hereby certify that this document filed through the ECF system on this
3	day of August 2023, will be sent electronically to the registered participants as
4	identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to
5	those that are indicated as non-registered participants, if any.
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7	
8	/s/ Seth L. Berman
9	Seth L. Berman, Esq.
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